FEDERAL REGISTER

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Regulations

TITLE 6—AGRICULTURAL CREDIT

Chapter I—Farm Credit Administration

PART 21—THE FEDERAL LAND BANK OF SPRINGFIELD

RELEASE OF PERSONAL LIABILITY

Section 21.4 of Title 6, Code of Federal Regulations, is amended to read as follows:

§ 21.4 *Release of personal liability.* Each application for a release of personal liability in connection with a Federal Land Bank loan, a Land Bank Commissioner loan, or a joint Land Bank and Land Bank Commissioner loan shall be accompanied by a fee of $10.00, such fee to be refunded in its entirety to the applicant if no appraisal or field investigation is made. (Sec. 13 Ninth, 39 Stat. 372, sec. 26, 48 Stat. 44, sec. 32, 48 Stat. 43, as amended; 12 U. S. C. 781 Ninth, 723 (e), 1016 (e) and Sup.; 6 CFR 19.326) (Res. Ex. Com. April 30, 1943)

[SEAL] THE FEDERAL LAND BANK OF SPRINGFIELD,
H. P. PERKINS,
Secretary.

[F. R. Doc. 43-7394; Filed, May 11, 1943; 9:53 a. m.]

PART 27—THE FEDERAL LAND BANK OF ST. PAUL

LIQUIDATION OR PREPAYMENT FEES

Section 27.6 of Title 6, Code of Federal Regulations, is amended to read as follows:

§ 27.6 *Liquidation or prepayment fees.* No fee shall be charged in connection with the prepayment of any Federal Land Bank loan. (Sec. 12 "Second", 39 Stat. 370, as amended; 12 U.S.C. 771 "Second") [Res. Bd. Dir., April 22, 1943]

[SEAL] THE FEDERAL LAND BANK OF ST. PAUL,
P. N. JOHNSON,
Vice President.

[F. R. Doc. 43-7395; Filed, May 11, 1943; 9:53 a. m.]

TITLE 10—ARMY: WAR DEPARTMENT

Chapter VIII—Procurement and Disposal of Equipment and Supplies

PART 81—PROCUREMENT OF MILITARY SUPPLIES AND ANIMALS

MISCELLANEOUS AMENDMENTS

Section 81.308a is amended as follows:

§ 81.308a *Supplemental agreements and change orders not involving receipt of consideration.* Approval by the Director, Purchase Division, Headquarters, Army Service Forces, will be required for each supplemental agreement or change order which does not involve the receipt by the Government of adequate legal consideration, or which modifies or releases an accrued obligation owing directly or indirectly to the Government including accrued liquidated damages or liability under any surety or other bonds. In every such case the supply service shall submit a full statement of the case and of the action recommended together with a finding by the supply service, adequately supported, that the prosecution of the war would be facilitated by the action recommended. The Director, Purchases Division, will signify his approval by manual execution of the supplemental agreement or change order, where such instrument is submitted, or where such instrument is not submitted, by memorandum, indorsement, letter or telegram in response to the request for approval. Attention is directed to the provisions of § 81.308g. [War Dept. Procurement Regs. as amended by Change 14, March 26, 1942]

In § 81.420 paragraphs (a), (c) and (e) are amended as follows:

§ 81.420 *Cost-plus-a-fixed-fee contracts.* * * *

(a) *Fire and allied insurance coverages.* These forms of insurance will not be authorized without the prior approval of the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces.

* * * * *

(c) *Marine Insurance.* Where the operation of floating equipment is involved,

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FEDERAL REGISTER

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a report stating the nature of the work, a description of the equipment and terms under which it is being used will be made to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces. Arrangements, to be announced later, are in process whereby all such equipment will be insured through the Maritime Commission.

* * * * *

(e) *Methods of purchase.* The coverages required by paragraph (b) of this section hereof will be purchased and written under the War Department Insurance Rating Plan. The only exception to this requirement will be when insurance carriers are prohibited by state insurance officials from writing policies on this basis. All such cases will be directed to the attention of the Insurance Branch, Fiscal Division, Army Service Forces. In those cases where the War Department Insurance Rating Plan is inapplicable, insurance may be purchased on the customary basis. [War Dept. Procurement Regs. as amended by change dated Nov. 19, 1942]

Section 81.980y is amended as follows:

§ 81.980y *General order 25-A.*

General Order 25-A. General Order 25 adopted on December 22, 1942, is hereby revoked. In its place, the following order is adopted:

(a) The National War Labor Board in accordance with the further provisions of this order hereby delegates to the Board of Directors of the Tennessee Valley Authority the power to approve or disapprove all applications for adjustments of wages and salaries (insofar as approval thereof has been made a function of the National War Labor Board) of employees of the Tennessee Valley Authority; also applications to equalize the wages and salaries of laborers and mechanics while actually employed by contractors in performing contracts with the Tennessee Valley Authority within paragraph 2 section 3 of the Tennessee Valley Authority Act, as amended, with the wages and salaries of like employees of the Tennessee Valley Authority.

(b) In the performance of its duties hereunder, the Board of Directors of the Tennessee Valley Authority shall comply with Executive Order 9250, dated October 3, 1942, and all regulations heretofore or hereafter issued thereunder, and with the declaration of wage policy of the National War Labor Board, dated November 6, 1942. In ruling on applications for adjustments of wages and salaries of laborers and mechanics employed by contractors, it shall approve them only if they fix the same wages and salaries for such employees as for the employees of the Tennessee Valley Authority performing like work. Disapproval of an application on the ground that it does not fix such equal wages and salaries shall not preclude application through other channels of the National War Labor Board. The Board of Directors of the Tennessee Valley Authority, without making an initial ruling thereon may refer to the National War Labor Board, for decision by the Board, any application which in its opinion presents doubtful or disputed questions of sufficient seriousness and import to warrant direct action by the Board.

(c) The Board of Directors of the Tennessee Valley Authority shall transmit to the Review and Research Division of the National War Labor Board copies of its rulings, and rules of procedure, if any, as they are issued, and such additional data and reports of said Division or the Board may from time to time deem necessary.

(d) Any ruling by the Board of Directors of the Tennessee Valley Authority hereunder shall be deemed the act of the National War Labor Board and shall be final, subject to the National War Labor Board's right to review rulings on its own motion and to reverse or modify the same. Any such reversal or modification shall not be retroactive and shall allow the Tennessee Valley Authority or the contractor, as the case may be, a period of two weeks for compliance. [War Dept. Procurement Regs. as amended by Change No. 11, Feb. 19, 1943]

Section 81.981 is added as follows:

§ 81.981 *Delegations of Industrial Commissions.* From time to time the National War Labor Board delegates to Industrial Commissions the power to approve or disapprove applications for wage and salary adjustments (insofar as approval thereof has been made a function of the National War Labor Board) of employees within such respective industries. Such delegations are set forth in Directive Orders of the Board and appear in the succeeding §§ 81.981a to 81.981e, inclusive. [War Dept. Procurement Regs. as amended by Change No. 11, Feb. 19, 1943]

AUTHORITY: Sec. 5a National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225; 10 U.S.C. 1193–1195, and the First War Powers Act 1941, 55 Stat. 838, 50 U.S.C. Supp. 601–622.

[SEAL] J. A. ULIO,
Major General,
The Adjutant General.

[F. R. Doc. 43-7392; Filed, May 11, 1943; 9:53 a. m.]

Chapter IX—Transport

PART 93—TRANSPORTATION OF INDIVIDUALS

SHIPMENT HOME OF REMAINS

Suspension notice pertaining to § 93.6, published in the FEDERAL REGISTER, December 25, 1941 (6 F.R. 6730), is rescinded and the following substituted therefor:

1. During the period that the United States is at war, the shipment home of remains from foreign possessions and other stations outside the continental limits of the United States is suspended, except as provided herein.

2. Remains may be returned to the continental United States from points on the North American Continent by commercial carrier transportation other than air or ocean or coastwise vessels, provided that sanitary and shipping requirements of the several countries are observed and that such transportation is available therefor and not required for the movement of troops or supplies.

3. In this connection no commercial carrier transportation is available at present by land between Alaska and the United States proper.

4. Section 93.6 is suspended to the extent indicated herein. (R.S. 161; 5 U.S.C. 22) [War Dept. Memorandum No. W55-16-43, April 29, 1943]

[SEAL] J. A. ULIO,
Major General,
The Adjutant General.

[F. R. Doc. 43-7393; Filed, May 11, 1943; 9:52 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 4907]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

MILTON GOLDENBERG, ET AL.

§ 3.69 (a) *Misrepresenting oneself and goods—Business status, advantages or connections—Nature, in general:* § 3.72 (n10) *Offering deceptive inducements to purchase or deal—Terms and conditions:* § 3.96 (b) *Using misleading name—Vendor—Nature, in general.* In connection with offer, etc., in commerce, of respondents' post cards or any other similar printed or written material, and among other things, as in order set forth, (1) using the words "Golden Distributors," or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are connected in any capacity with the movement or transportation of goods or shipments, or with the delivery of goods or shipments to the consignees thereof; or (2) representing, directly or by implication, that persons concerning whom information is sought through respondents' post cards or other material are or may be consignees of goods or packages in the hands of respondents, or that the information sought through such means is for the purpose of enabling respondents to make delivery of goods or packages to such persons; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Cease and desist order, Milton Goldenberg, et al., Docket 4907, April 29, 1943]

§ 3.55 *Furnishing means and instrumentalities of misrepresentation or deception:* § 3.69 (a) *Misrepresenting oneself and goods—Business status, advantages or connections—Nature, in general:* § 3.72 (n10) *Offering deceptive inducements to purchase or deal—Terms and conditions:* § 3.96 (b) *Using misleading name—Vendor—Nature, in general.* In connection with offer, etc., in commerce, of respondents' post cards or any other similar printed or written material, and among other things, as in order set forth, (1) using the words "Golden Sales Agency", or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are engaged in the business of selling or distributing goods or merchandise; or (2) using, or supplying to others for use, post cards or other material which represent, directly or by implication, that they are for the purpose of introducing respondents' pens or any other merchandise to the public; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Cease and desist order, Milton Goldenberg, et al., Docket 4907, April 29, 1943]

§ 3.55 *Furnishing means and instrumentalities of misrepresentation or deception:* § 3.69 (a) *Misrepresenting oneself and goods—Business status, advantages or connections—Nature, in general:* § 3.72 (n10) *Offering deceptive inducements to purchase or deal—Terms and conditions.* In connection with offer, etc., in commerce, of respondents' post cards or any other similar printed or written material, and among other things, as in order set forth, using, or supplying to others for use, post cards or other material which represent, directly or by implication, that respondents' business is other than that of obtaining information for use in the collection of debts, or that the information sought through such post cards or other material is for any purpose other than for use in the collection of debts; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Cease and desist order, Milton Goldenberg, et al., Docket 4907, April 29, 1943]

In the Matter of Milton Goldenberg, Also Known as Milton Golden, Natalie Goldenberg, Also Known as Natalie Golden, and Leonard Goldenberg, Also Known as Leonard Golden, Individuals

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of April, A. D. 1943.

This proceeding having been heard by the Federal Trade Commision upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all of the material allegations of fact in the complaint and waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Milton Goldenberg, also known as Milton Golden, Natalie Goldenberg, also known as Natalie Golden, and Leonard Goldenberg, also known as Leonard Golden, individually and trading as Golden Distributors and as Golden Sales Agency, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the of-

fering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' post cards or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the words "Golden Distributors," or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are connected in any capacity with the movement or transportation of goods or shipments, or with the delivery of goods or shipments to the consignees thereof.

2. Representing, directly or by implication, that persons concerning whom information is sought through respondents' post cards or other material are or may be consignees of goods or packages in the hands of respondents, or that the information sought through such means is for the purpose of enabling respondents to make delivery of goods or packages to such persons.

3. Using the words "Golden Sales Agency," or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are engaged in the business of selling or distributing goods or merchandise.

4. Using, or supplying to others for use, post cards or other material which represent, directly or by implication, that they are for the purpose of introducing respondents' pens or any other merchandise to the public.

5. Using, or supplying to others for use, post cards or other material which represent, directly or by implication, that respondents' business is other than that of obtaining information for use in the collection of debts, or that the information sought through such post cards or other material is for any purpose other than for use in the collection of debts.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 43-7414; Filed, May 11, 1943; 11:49 a. m.]

[Docket No. 1612]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

J. A. STRANSKY MANUFACTURING COMPANY

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product or service:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* In connection with offer, etc., in commerce, of respondent's "Stransky Vaporizer", or any other similar device, and among other things, as in order set forth, representing directly or by implication, (1) that any greater reduction in gasoline consumption or improvement in automobile engine performance can be obtained through the use of respondent's device than that which may be obtained without such device by adjustment of the carburetor; (2) that respondent's device will remove carbon from the parts of an automobile engine or reduce formation of carbon; (3) that respondent's device will reduce spark-plug trouble, give power or speed to an automobile engine, or prevent overheating of such engine; or (4) that respondent's device will cause a motor to start more easily, eliminate oil pumping, or reduce oil consumption; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Cease and desist order, J. A. Stransky Manufacturing Company, Docket 1612, April 28, 1943]

§ 3.6 (i) *Advertising falsely or misleadingly—Free goods or service:* § 3.6 (i5) *Advertising falsely or misleadingly—Free test or trial:* § 3.72 (e) *Offering deceptive inducements to purchase or deal—Free goods:* § 3.72 (f5) *Offering deceptive inducements to purchase or deal—Free test or trial.* In connection with offer, etc., in commerce, of respondent's "Stransky Vaporizer", or any other similar device, and among other things, as in order set forth, (1) using the term "free" or any other term of similar import or meaning to designate, describe, or in any way refer to articles of merchandise regularly included in a combination offer with respondent's devices or other merchandise; or (2) representing directly or by implication that respondent will permit prospective purchasers to test his device without charge before buying, when prospective purchasers are required to pay the purchase price in advance before being permitted to test such device; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Cease and desist order, J. A. Stransky Manufacturing Company, Docket 1612, April 28, 1943]

In the Matter of J. A. Stransky and L. G. Stransky, Copartners, Trading Under the Firm Name and Style of J. A. Stransky Manufacturing Company

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 28th day of April, A. D. 1943.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and supplemental report of Trial Examiner Lewis C. Russell upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondent L. G. Stransky, trading as J. A. Stransky Manufacturing Company, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent L. G. Stransky, an individual trading as J. A. Stransky Manufacturing Company, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of his device designated as "Stransky Vaporizer," or any other device of substantially similar construction or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Representing directly or by implication that any greater reduction in gasoline consumption or improvement in automobile engine performance can be obtained through the use of respondent's device than that which may be obtained without such device by adjustment of the carburetor.

2. Representing directly or by implication that respondent's device will remove carbon from the parts of an automobile engine or reduce formation of carbon.

3. Representing directly or by implication that respondent's device will reduce spark-plug trouble, give power or speed to an automobile engine, or prevent overheating of such engine.

4. Representing directly or by implication that respondent's device will cause a motor to start more easily, eliminate oil pumping, or reduce oil consumption.

5. Using the term "free" or any other term of similar import or meaning to designate, describe, or in any way refer to articles of merchandise regularly included in a combination offer with respondent's devices or other merchandise.

6. Representing directly or by implication that respondent will permit prospective purchasers to test his device without charge before buying, when prospective purchasers are required to pay the purchase price in advance before being permitted to test such device.

It is further ordered, That the complaint be dismissed as to respondent J. A. Stransky, deceased.

It is further ordered, That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and

form in which he has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 43-7413; Filed, May 11, 1943; 11:49 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

FORMS FOR ANNUAL REPORTS

Amendment to rule governing forms to be used for filing annual reports under the Act of Registrants under Securities Act of 1933.

The Securities and Exchange Commission, acting pursuant to authority conferred upon it by the Securities Exchange Act of 1934, particularly sections 15 (d) and 23 (a) thereof, and deeming such action necessary and appropriate in the public interest and for the protection of investors and necessary for the execution of the functions vested in it by the said Act, hereby takes the following action:

(1) The paragraph of § 240.15d-2 [Rule X-15D-2] under the caption "Form 2-MD for Investment Trusts Having Securities Registered on Form C-1" is amended to read as follows:

§ 240.15d-2 *Forms for annual reports of registrants under Securities Act of 1933.* * * *

Form 2-MD for investment trusts having securities registered on Form C-1. This form is to be used for annual reports pursuant to section 15 (d) of the Securities Exchange Act of 1934 relating to securities of unincorporated investment trusts of the fixed or restricted management type having a depositor or sponsor but not having a board of directors or persons performing similar functions, except that this form shall not be used by any trust for which Form N-30A-1, N-30A-2 or N-30A-3 is prescribed.

(2) Section 240.15d-2 [Rule X-15D-2] is further amended by adding at the end thereof the following new paragraphs:

§ 240.15d-2 *Forms for annual reports of registrants under Securities Act of 1933.* * * *

Form N-30A-2 for unit investment trusts currently issuing securities. This form shall be used for annual reports pursuant to section 15 (d) of the Securities Exchange Act of 1934 of unit investment trusts, registered under the Investment Company Act of 1940, which are currently issuing securities, including unit investment trusts which are issuers of periodic payment plan certificates.

Form N-30A-3 for unincorporated management investment companies currently issuing periodic payment plan certificates. This form shall be used for annual reports pursuant to section 15 (d) of the Securities Exchange Act of 1934 for unincorporated management investment companies, registered under the Investment Company Act of 1940, currently issuing periodic payment plan certificates.

Effective May 8, 1943.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 43-7409; Filed, May, 11, 1943; 9:53 a. m.]

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

FORM FOR ANNUAL REPORTS OF INVESTMENT TRUSTS

Amendment No. 2 to Form 2-MD.

The Securities and Exchange Commission, acting pursuant to authority conferred upon it by the Securities Exchange Act of 1934, particularly sections 15 (d) and 23 (a) thereof, and deeming such action necessary and appropriate in the public interest and for the protection of investors and necesary for the execution of the functions vested in it by the said Act, hereby takes the following action:

The rule as to the use of Form 2-MD for investment trusts having securities registered on Form C-1, contained in the Instruction Book for Form 2-MD, is amended to read as follows:

This form is to be used for annual reports pursuant to section 15 (d) of the Securities Exchange Act of 1934 relating to securities of unincorporated investment trusts of the fixed or restricted management type having a depositor or sponsor but not having a board of directors or persons performing similar functions, except that this form shall not be used by any trust for which Form N-30A-1, N-30A-2 or N-30A-3 is prescribed.

Effective May 8, 1943.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 43-7410; Filed, May 11, 1943; 9:54 a. m.]

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

FORMS FOR ANNUAL REPORTS OF REGISTERED INVESTMENT COMPANIES

The Securities and Exchange Commission, acting pursuant to authority conferred upon it by the Investment Company Act of 1940, particularly sections 30 (a), 30 (c) and 38 (a) thereof, and deeming such action necessary and appropriate in the public interest and for the protection of investors and necessary for the execution of the functions vested in it by the said Acts, hereby takes the following action:

Section 270.30a-2 [Rule N-30A-2] is amended to read as follows:

§ 270.30a-2 *Forms for annual reports of registered investment companies.* The following forms are hereby prescribed as the forms for annual reports which shall be filed by registered investment companies pursuant to section 30 (a) of the Act:

Form N-30A-1 for registered management investment companies. This form shall be used by all registered management investment companies except those which issue periodic payment plan certificates.

Form N-30A-2 for unit investment trusts which are currently issuing securities.[1] This form shall be used by all unit investment trusts which are currently issuing securities, including unit investment trusts which are issuers of periodic payment plan certificates.

Form N-30A-3 for unincorporated management investment companies currently issuing periodic payment plan certificates.[1] This form shall be used by all unincorporated management companies currently issuing periodic payment plan certificates.

Effective May 8, 1943.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 43-7403; Filed, May 11, 1943; 9:55 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue

Subchapter A—Income and Excess-Profits Taxes

[T.D. 5264]

PART 30—REGULATIONS UNDER THE EXCESS-PROFITS TAX ACT OF 1940

GENERAL EXCESS PROFITS TAX RELIEF

In order to conform Regulations 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.] to section 222 (a), (c), and (e) (1) of the Revenue Act of 1942 (Public Law 753, 77th Congress), approved October 21, 1942, and to the Joint Resolution of March 31, 1943 (Public Law 21, 78th Congress), such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding § 30.722-1 the following:

SEC. 222. RELIEF PROVISIONS. (Revenue Act of 1942, Title II.)

[1] Filed as part of original document.

(a) *General relief.* Section 722 is amended to read as follows:

SEC. 722. GENERAL RELIEF—CONSTRUCTIVE AVERAGE BASE PERIOD NET INCOME.

(a) *General rule.* In any case in which the taxpayer establishes that the tax computed under this subchapter (without the benefit of this section) results in an excessive and discriminatory tax and establishes what would be a fair and just amount representing normal earnings to be used as a constructive average base period net income for the purposes of an excess profits tax based upon a comparison of normal earnings and earnings during an excess profits tax period, the tax shall be determined by using such constructive average base period net income in lieu of the average base period net income otherwise determined under this subchapter. In determining such constructive average base period net income, no regard shall be had to events or conditions affecting the taxpayer, the industry of which it is a member, or taxpayers generally occurring or existing after December 31, 1939, except that, in the cases described in the last sentence of section 722 (b) (4) and in section 722 (c), regard shall be had to the change in the character of the business under section 722 (b) (4) or the nature of the taxpayer and the character of its business under section 722 (c) to the extent necessary to establish the normal earnings to be used as the constructive average base period net income.

(b) *Taxpayers using average earnings method.* The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in the case of a taxpayer entitled to use the excess profits credit based on income pursuant to section 713, if its average base period net income is an inadequate standard of normal earnings because:

(1) In one or more taxable years in the base period normal production, output, or operation was interrupted or diminished because of the occurrence, either immediately prior to, or during the base period, of events unusual and peculiar in the experience of such taxpayer,

(2) The business of the taxpayer was depressed in the base period because of temporary economic circumstances unusual in the case of such taxpayer or because of the fact that an industry of which such taxpayer was a member was depressed by reason of temporary economic events unusual in the case of such industry,

(3) The business of the taxpayer was depressed in the base period by reason of conditions generally prevailing in an industry of which the taxpayer was a member, subjecting such taxpayer to

(A) A profits cycle differing materially in length and amplitude from the general business cycle, or

(B) Sporadic and intermittent periods of high production and profits, and such periods are inadequately represented in the base period,

(4) The taxpayer, either during or immediately prior to the base period, commenced business or changed the character of the business and the average base period net income does not reflect the normal operation for the entire base period of the business. If the business of the taxpayer did not reach, by the end of the base period, the earning level which it would have reached if the taxpayer had commenced business or made the change in the character of the business two years before it did so, it shall be deemed to have commenced the business or made the change at such earlier time. For the purposes of this subparagraph, the term "change in the character of the business" includes a change in the operation or management of the business, a difference in the products or services furnished, a difference in the capacity for production or operation, a difference in the ratio of nonborrowed capital to total capital, and the acquisition before January 1, 1940, of all or part of the assets of a competitor, with the result that the competition of such competitor was eliminated or diminished. Any change in the capacity for production or operation of the business consummated during any taxable year ending after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940, or any acquisition before May 31, 1941, from a competitor engaged in the dissemination of information through the public press, of substantially all the assets of such competitor employed in such business with the result that competition between the taxpayer and the competitor exising before January 1, 1940, was eliminated, shall be deemed to be a change on December 31, 1939, in the character of the business, or

(5) Of any other factor affecting the taxpayer's business which may reasonably be considered as resulting in an inadequate standard of normal earnings during the base period and the application of this section to the taxpayer would not be inconsistent with the principles underlying the provisions of this subsection, and with the conditions and limitations enumerated therein.

(c) *Invested capital corporations, etc.* The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in the case of a taxpayer, not entitled to use the excess profits credit based on income pursuant to section 713, if the excess profits credit based on invested capital is an inadequate standard for determining excess profits, because:

(1) The business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income,

(2) The business of the taxpayer is of a class in which capital is not an important income-producing factor, or

(3) The invested capital of the taxpayer is abnormally low.

In such case for the purposes of this subchapter, such taxpayer shall be considered to be entitled to use the excess profits credit based on income, using the constructive average base period net income determined under subsection (a). For the purposes of section 713 (g) and section 743, the beginning of the taxpayer's first taxable year under this subchapter shall be considered to be that date after which capital additions and capital reductions were not taken into account for the purposes of this subsection.

(d) *Application for relief under this section.* The taxpayer shall compute its tax, file its return, and pay its tax under this subchapter without the application of this section, except as provided in section 710 (a) (5). The benefits of this section shall not be allowed unless the taxpayer, not later than six months after the date prescribed by law for the filing of its return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, within six months after the date of the enactment of the Revenue Act of 1942, makes application therefor in accordance with regulations to be prescribed by the Commissioner with the approval of the Secretary, except that if the Commissioner in the case of any taxpayer with respect to the tax liability of any taxable year:

(1) Issues a preliminary notice proposing a deficiency in the tax imposed by this subchapter such taxpayer may, within ninety days after the date of such notice make such application, or

(2) Mails a notice of deficiency (A) without having previously issued a preliminary notice thereof or (B) within ninety days after the date of such preliminary notice, such taxpayer may claim the benefits of this section in its petition to the Board or in an amended petition in accordance with the rules of the Board.

If the application is not filed within six months after the date prescribed by law for the filing of the return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, within six months after the date of the enactment of the Revenue Act of 1942, the operation of this section shall not reduce the tax otherwise determined under this subchapter by an amount in excess of the amount of the deficiency finally determined under this subchapter without the application of this section. If a constructive average base period net income has been determined under the provisions of this section for any taxable year, the Commissioner may, by regulations approved by the Secretary, prescribe the extent to which the limitations prescribed by this subsection may be waived for the purpose of determining the tax under this subchapter for a subsequent taxable year.

(e) *Rules for application of section.* For the purposes of this section:

(1) The tax imposed by this subchapter shall be the tax before the allowance of the foreign tax credit pursuant to section 729 (c) and (d);

(2) In the case of a taxpayer, the average base period net income of which is computed under Supplement A, for the period for which the income of any other person is included in the computation of the average base period net income of the taxpayer, the taxpayer shall be treated as if such other person's business were a part of the business of the taxpayer.

(f) *Mining corporations.* In the case of a taxpayer to which section 711 (a) (1) (I) or section 711 (a) (2) (K) applies, if its constructive average base period net income is established under this section, there shall also be determined a fair and just amount to be used as normal output and normal unit profit for the purposes of section 735.

* * * * *

(e) *Retroactive application of provisions relative to general relief and income from long-term contracts.* (1) The amendments made by this section to section 722 shall be applicable with respect to taxable years beginning after December 31, 1939.

* * * * *

JOINT RESOLUTION. (Public Law 21, 78th Congress, enacted March 31, 1943.)

Resolved by the Senate and House of Representatives of the United States of America

in Congress assembled, That section 722 (d) of the Internal Revenue Code (relating to application for relief from excessive and discriminatory excess-profits taxes) is amended by striking out "within six months after the date of the enactment of the Revenue Act of 1942" wherever it appears, and inserting in lieu thereof "prior to September 16, 1943".

* * * * *

PAR. 2. Sections 30.722–1, 30.722–2, as added by Treasury Decision 5045, approved May 3, 1941, § 30.722–3, as added by Treasury Decision 5045 and amended by Treasury Decision 5153, approved June 4, 1942, § 30.722–4, as added by Treasury Decision 5045 and amended by Treasury Decision 5092, approved October 21, 1941, and § 30.722–5, as added by Treasury Decision 5045 and amended by Treasury Decision 5153, are stricken out, and there is inserted in lieu thereof the following:

§ 30.722–1 *General rule.* Section 722 provides for the extension of excess profits tax relief for taxable years beginning after December 31, 1939, to any taxpayer subject to the excess profits tax which satisfies the conditions and limitations expressed in such section. Relief is available whether the actual excess profits credit of the taxpayer is based on income or on invested capital and regardless of when the first excess profits tax taxable year of the taxpayer begins. A taxpayer which claims relief and which is entitled to use the excess profits credit based on income under section 713 or Supplement A, regardless of which excess profits credit is actually used in computing the excess profits tax on its return, must establish that its business during the base period falls into one or more of the categories described in section 722 (b) in order to be eligible for relief. A taxpayer is considered to be entitled to use the excess profits credit based on income even though the excess profits credit based on invested capital produces a lower tax than the excess profits credit based on income (computed without the benefit of section 722) for any excess profits tax taxable year for which a claim for relief is made. A taxpayer which claims relief under section 722 and which is not entitled to use the excess profits credit based on income under section 713 or Supplement A must establish that its invested capital falls into one or more of the categories specified in section 722 (c) in order to become eligible for relief under section 722. In either case, once eligibility for relief is established, the taxpayer will be deemed to be entitled to use the excess profits credit based on income and any relief to be extended under secton 722 shall be in the form of a constructive average base period net income.

§ 30.722–2 *Constructive average base period net income*—(a) *In general.* If a taxpayer establishes:

(1) That the excess profits tax determined without regard to the provisions of section 722 results in an excessive and discriminatory tax, and

(2) What would be a fair and just amount representing normal earnings to be used as a constructive average base period net income for the purposes of an excess profits tax based upon a comparison of normal earnings and earnings during an excess profits tax period, the excess profits tax for the taxable year shall be determined by using the excess profits credit computed upon the basis of such constructive average base period net income in lieu of the actual excess profits credit based on income or invested capital, as the case may be.

The excess profits tax is excessive and discriminatory if in the instances described in section 722 (b) the excess profits credit based on income is an inadequate standard of normal earnings or if in the instances described in section 722 (c) the excess profits credit based on invested capital is an inadequate standard for determining excess profits. Excessive and discriminatory taxation may result if, in a proper case, the taxpayer is not allowed to compute its unused excess profits credit for purposes of the unused excess profits credit adjustment for prior or subsequent years upon the basis of the excess profits credit based on constructive average base period net income in lieu of the actual excess profits credit. For what constitutes an excessive and discriminatory tax, computed without the provisions of section 722, see §§ 30.722–3 and 30.722–4.

The constructive average base period net income is a fair and just amount representing normal earnings to be attributed to the taxpayer with respect to years prior to the excess profits tax return period for the purposes of establishing a standard to be used in the computation of an excess profits tax based upon a comparison of normal earnings and earnings during the excess profits tax period. The determination of such constructive average base period net income must be made without regard to events or conditions affecting the taxpayer, the industry of which it is a member, or taxpayers generally occurring after December 31, 1939. Such events or conditions are deemed to be integral parts of the war economy; they cannot therefore be accepted as either accurate or reliable determinants of normal operations or normal earnings. Thus high war prices, swollen demand, and other factors which would not be normal in the experience of the business for years prior to the imposition of the excess profits tax shall not be considered in determining the normal earnings of the taxpayer. However, in certain cases involving a change in the character of the business consummated during a taxable year ending after December 31, 1939, as described in the last sentence of section 722 (b) (4) (see § 30.722–3 (d)), and in the case of a taxpayer first coming into existence as described in section 722 (c) (see § 30.722–4), regard shall be had to such change in the character of the business under section 722 (b) (4) or to the nature of the taxpayer and the character of its business under section 722 (c) to the extent necessary to establish the normal earnings to be used as the constructive average base period net income.

(b) *Rules for determination.* The determination of the constructive average base period net income must depend in each instance upon the facts and circumstances presented by the taxpayer and upon the provisions of section 722 forming the basis of the taxpayer's contention that its excess profits tax is excessive and discriminatory, i. e., if the taxpayer is entitled to use the excess profits credit based on income, the reasons why such credit is an inadequate standard of normal earnings, or if the taxpayer is not entitled to use such credit, the reasons why the excess profits credit based on invested capital is an inadequate standard for determining excess profits. No single test or standard of universal application can be prescribed pursuant to which every taxpayer must establish the fair and just amount representing normal earnings to be used as its constructive average base period net income. However, the following principles and rules must be observed in every case in which a constructive average base period net income is determined:

(1) Section 722 (a) provides for the determination of a constructive average base period net income to be used in lieu of the actual average base period net income in those cases to which section 722 is applicable. Since the constructive average base period net income is the fair and just amount representing normal earnings, a taxpayer in computing such amount is not, as a matter of right, entitled to use the rules provided by section 713 (e) (1) (prior to its amendment by the Revenue Act of 1942), relating to exclusion of deficit, by section 713 (e) (1) (after its amendment by that Act), relating to increase in base period net income of lowest year of base period, or by section 713 (f), relating to average base period net income in case of increased earnings in last half of base period. However, in a proper case the principles underlying sections 713 (e) (1) and 713 (f) may be taken into account if and to the extent that the application of such principles is reasonable and consistent with the conditions and limitations of section 722 and of such sections.

(2) If normal earnings are reconstructed for poor years within the base period of a taxpayer, the fair and just amount representing normal earnings determined with respect to such period cannot treasonably include above-normal earnings for other years in the base period. Consequently, if the constructive average base period net income involves a reconstruction of normal earnings for one or more taxable years in the base period, the taxpayer must be able to establish that the actual excess profits net income for other taxable years in the base period is not unusually large. Unusually large excess profits net income may occur either as the result of abnormally large gross income or as the result of abnormally low deductions. Thus if a manufacturing corporation, which was in existence throughout the base period, had a fire in 1937 which seriously interrupted production and caused an operating loss for such year but enjoyed exceptionally high earnings in 1938 as a result of production and sales which normally would have been enjoyed in 1937 and 1938, the excess profits net income for

1937 cannot be reconstructed upon the basis of normal earnings without also reconstructing excess profits net income for 1938 so as to eliminate the effects of the duplicated production and income for such year. Likewise if in 1939, the taxpayer had exceptionally high earnings because of increased sales due primarily to a fire interrupting the production of its chief competitor, the income for 1939 must be adjusted to eliminate the effects of such unusual circumstance. However, no adjustment shall be made to eliminate income due to more favorable general business conditions.

Excess profits net income shall be considered unusually large in a taxable year in the base period only if, as the result of physical or economic circumstances unusual and peculiar in the case of the taxpayer, the income for such year is larger than it would have been if such circumstances had not occurred. Increased income due to circumstances which have affected business in general and which have caused an increase in the earnings of business in general, or due to circumstances which would not be considered unusual and peculiar in the experience of the taxpayer shall not be deemed to result in unusually large excess profits net income. If excess profits net income for a taxable year is determined to be unusually large, gross income and deductions shall be recomputed so as to remove the effect of the unusual circumstances in the computation of excess profits net income for such year.

(3) Except as otherwise provided, the constructive average base period net income shall be computed with regard to the principles in section 711 (b) (relating to excess profits net income for taxable years in the base period) applicable to the taxable year for which the constructive average base period net income is used. The rules provided by section 711 (b) (1) (H), (I), (J), and (K), relating to abnormal deductions and costs may not be used as a matter of right in computing the constructive average base period net income. In a proper case, however, the principles underlying section 711 (b) (1) (H), (I), (J), and (K), may be taken into account if and to the extent that the application of such principles is reasonable and consistent with the conditions and limitations of section 722 and of such section.

(4) If the taxpayer has acquired the business of any other person (corporation, partnership, or individual) hereafter called "a component corporation" in a transaction which enables the taxpayer to compute its average base period net income under the provisions of Supplement A, the business of such component corporation shall be considered to be a part of the business of the taxpayer for the period for which the income of such component corporation is included in the computation of the average base period net income of the taxpayer under Supplement A. A taxpayer which has acquired, in a transaction which constitutes it an acquiring corporation under Supplement A, a component corporation for which a constructive average base period net income has been finally determined and has been used by such component in a taxable year prior to its acquisition, cannot as a matter of right use such constructive average base period net income in the determination of its average base period net income under Supplement A. The taxpayer as an acquiring corporation must establish, in accordance with the provisions of section 722 (e) (2), the amount which, in the light of such provisions, would constitute a fair and just amount representing normal earnings to be used as its constructive average base period net income. If the taxpayer has during the base period acquired substantially all the assets of another corporation in a transaction which does not constitute the taxpayer an acquiring corporation within the provisions of Supplement A, and after such transaction such other corporation ceases business, the business of such other corporation attributable to the assets acquired may be considered to be a part of the business of the taxpayer during the base period, to the extent to which it does not duplicate the business of the taxpayer otherwise carried on.

(5) If a taxpayer which, for the purposes of the income tax imposed by chapter 1, computes its income from installment sales under the method provided by section 44 (a) elects to compute such income for excess profits tax purposes under subchapter E of chapter 2 upon the accrual basis pursuant to section 736 (a), any constructive average base period net income established with respect to such taxpayer shall be determined under the accounting methods underlying the computation of income from installment sales followed by the taxpayer in computing its income tax for the base period.

(6) If a taxpayer elects under the provisions of section 736 (b) to compute income from contracts the performance of which requires more than twelve months upon the percentage of completion method of accounting, any constructive average base period net income established with respect to such taxpayer shall be determined in accordance with the principles underlying the percentage of completion method of accounting. (See § 19.24–4 (a).)

(7) If an affiliated group of corporations makes a consolidated excess profits tax return under section 730 for a taxable year beginning prior to January 1, 1942, or under section 141 for a taxable year beginning after December 31, 1941, any constructive average base period net income must be established with respect to the group as a unit and no constructive average base period net income shall be established separately for any member of the group. If the members of an affiliated group for which a constructive average base period net income has been established are different during the taxable year from the members at the time such constructive average base period net income was established (because new members have been acquired by the group or because old members have ceased to remain members) or if one or more members of the group have become acquiring corporations of component corporations pursuant to Supplement A, the group may not as of right continue to use the constructive average base period net income previously established but must establish a new constructive average base period net income predicated upon the membership of the group for the taxable year for which relief is claimed. No constructive average base period net income determined with respect to any member of the group prior to the year for which the group makes a consolidated excess profits tax return shall be used by the group as a matter of right in computing its actual average base period net income. If a taxpayer ceases to be a member of an affiliated group which, during the time that such taxpayer was a member, made a consolidated excess profits tax return and used a constructive average base period net income in the computation of its excess profits tax, such taxpayer shall not use any portion of such constructive average base period net income in the computation of its separate excess profits tax or the excess profits tax of another affiliated group of which it becomes a member. Any constructive average base period net income to be used by such taxpayer or by such other group must be established solely with respect to such taxpayer or such group.

(8) For the purposes of section 722 and of § 30.722–3 (b) and (c), no exclusive definition of the concept "industry" can be constructed. In general an industry may be said to include a group of enterprises engaged in producing or marketing the same or similar products or services under analogous conditions which are essentially different from those encountered by other enterprises. The mere similarity of product and marketing methods, however, is not enough of itself to comprehend taxpayers satisfying such conditions within the same industry. Factors such as geographical location, character and location of markets, availability and character of raw material supply, and other conditions under which operations are carried on must be considered. Regard may be had to trade custom and practice in determining whether a group of enterprises constitutes an industry.

(9) The fact that the excess profits tax liability of a taxpayer, establishing eligibility for relief and a constructive average base period net income under section 722, is zero or is very small prior to the application of such section does not prevent the actual average base period net income from being an inadequate standard of normal earnings. Such a taxpayer is entitled to use the constructive average base period net income established under section 722 in the computation of its excess profits tax for all excess profits tax taxable years, and to compute its unused excess profits credit for any excess profits tax taxable year with respect to the excess profits credit based upon such constructive average base period net income. However, in the case of a taxpayer which is deemed to have commenced business or

to have changed the character of its business two years prior to the actual event, in the case of a taxpayer consummating a change in the capacity for production or operation in a taxable year beginning after December 31, 1939, as a result of a course of action to which it was committed prior to January 1, 1940, in the case of a taxpayer which prior to May 31, 1941, acquired from a competitor engaged in the dissemination of information through the public press substantially all the assets of such competitor employed in such business with the result that competition between the taxpayer and the competitor existing before January 1, 1940, was eliminated, or in the case of a taxpayer which commenced business after December 31, 1939, the constructive average base period net income might vary from one excess profits tax taxable year to another. As to the determination of the constructive average base period net income in such cases, see § 30.722–3 (d) and § 30.722–4.

(c) *Excess profits credit based on constructive average base period net income.* For any excess profits tax taxable year for which a constructive average base period net income has been determined under the provisions of section 722 and of this section, the excess profits credit based on income shall be an amount equal to:

(1) 95 percent of the constructive average base period net income determined under section 722;

(2) Plus 8 percent of the net capital addition defined in section 713 (g) computed with regard to the provisions of section 722 (c); or

(3) Minus 6 percent of the net capital reduction defined in section 713 (g) computed with regard to the provisions of section 722 (c).

(d) *Normal output and normal unit profit in case of producers of minerals or timber.* Nontaxable income from exempt excess output of mines or timber blocks determined under section 735 (relating to nontaxable income from certain mining and timber operations) may be excluded under section 711 (a) (1) (I) or section 711 (a) (2) (K) from the excess profits net income of a taxpayer for which there is established under section 722 a constructive average base period net income. For the purposes of computing nontaxable income from exempt excess output under section 735 in such a case, there shall be determined with respect to each mineral property as defined in section 735 (a) (6), or timber block as defined in section 735 (a) (8), in which an economic interest is owned by the taxpayer, a fair and just amount to be used as the normal output as defined in section 735 (a) (5), and with respect to such mineral property, a fair and just amount to be used as the normal unit profit as defined in section 735 (a) (9). However, no amounts representing fair and just normal output or normal unit profit for such base period shall be established for any mineral property or timber block unless the constructive average base period net income is predicated in whole or in part upon normal earnings attributable directly to such mineral property or timber block, unless such mineral property or timber block was in operation for at least six months during the taxable years beginning after December 31, 1935, and not beginning after December 31, 1939, of the person owning the mineral property or timber block (whether or not the taxpayer), and in the case of a timber block, unless such timber block was in existence and was acquired by the taxpayer prior to January 1, 1942. A normal output and a normal unit profit may be established for a mineral property or a timber block in which an economic interest is owned by the taxpayer despite the fact that such taxpayer came into existence after December 31, 1939, if such mineral property or timber block meets the requirements provided in the preceding sentence.

§ 30.722–3 *Determination of excessive and discriminatory tax; taxpayer entitled to excess profits credit based on income.* The excess profits tax computed without regard to the provisions of section 722, for any taxable year shall be considered to be excessive and discriminatory in the case of a taxpayer entitled to use the excess profits credit based on income pursuant to section 713 (or pursuant to Supplement A if the taxpayer is an acquiring corporation under Supplement A) if its actual average base period net income is an inadequate standard of normal earnings for one or more of the following reasons:

(a) *Interruption or diminution of normal production, output, or operation in the base period.* If the taxpayer establishes that in one or more taxable years in its base period normal production, output, or operation was interrupted or diminished because of the occurrence either immediately prior to, or during the base period, of events unusual and peculiar in the experience of the taxpayer, the average base period net income shall be considered to be an inadequate standard of normal earnings. Activities comprised within the meaning of production, output, or operation include the rendering of services in those cases in which corporations render services rather than manufacture or market tangible products, as for example advertising agencies, brokerage concerns, purchasing agents, etc. Normal production, output, or operation means the level of production, output, or operation which would have been reached by the business of the taxpayer had the unusual and peculiar events not occurred.

Not every interruption or diminution of normal production, output, or operation in the base period may furnish the basis of a claim for relief under section 722. The interruption or diminution must be a direct result of events unusual and peculiar in the experience of the taxpayer, and must occur in or immediately prior to the base period. A direct result of an unusual or peculiar event is a result which would occur as a normal consequence or effect of the event and one to which the event bears a causal relationship. The diminution or interruption of normal production, output, or operation may occur not only in the year in which such event occurs but may result in a later year directly affected by such event.

An event is deemed to occur immediately prior to the base period if under normal circumstances the effect of such event would not be fully manifested until a year in the base period and such effect is directly related to such occurrance. An event is unusual and peculiar in the experience of the taxpayer if its occurrence is not ordinarily encountered in such experience. The fact that such event unusual in the case of the taxpayer, is also unusual in the case of other taxpayers, as in the case of a flood in a particular locality, is no bar to a claim for relief under section 722 (b) (1). If an event is unusual in the course of normal business experience in general but regular in the case of the taxpayer, such event is not unusual and peculiar in the experience of the taxpayer. Thus, if a corporation is engaged in felling and transporting logs and timber, and if its annual operations are interrupted by spring floods occasioned by thaws and rains, such events are not unusual and peculiar in the experience of the taxpayer. Unusual and peculiar events contemplated in section 722 (b) (1) consist primarily of physical rather than economic events or circumstances. Except as otherwise described in this paragraph, such events would include floods, fires, explosions, strikes and other such exceptional and uncommon circumstances hindering production, output, or operation; such events would not include economic maladjustments such as high prices of materials, labor, capital, or any other agent of production, unusually low selling price of the product of the taxpayer, or unusually low physical volume of sales owing to low demand for such product or for the output of the taxpayer. However, a diminution in the taxpayer's production caused by a low demand for the product of the taxpayer resulting from the effects of war conditions in the country in which the taxpayer sold a substantial portion of its products may be an event which might form the basis of a claim for relief under section 722 (b) (1).

The taxpayer's normal production, output, or operation for those years in which interruption or diminution has been established may be determined by reference to its average production, output, or operation with respect to products or services of the same class. This determination may be made in the light of the experience of the taxpayer prior to its first excess profits tax taxable year (but not after May 31, 1940) or in the light of the experience of a comparable competitor or of an industry of which the taxpayer is a member, engaged in manufacturing or selling the same products or rendering the same services. No particular years or specific number of years in such experience need be selected in establishing normal production, output, or operation. However, normal earnings reconstructed for one or more taxable years in the base period or for the base period as a whole on account of

an interruption or diminution in production, output, or operation, must be determined in the light of business conditions prevailing during such period. Among the material factors to be considered are general business conditions, business conditions together with the taxpayer's competitive position in an industry of which the taxpayer is a member, and demand for the products or services of a class produced or rendered by the taxpayer. The cost of materials, labor, capital, or any other agent of production, the selling price of the product or the service, the physical volume of sales resulting from the demand for such products or services during the base period are also factors to be taken into account.

Thus, assume that, except for the year 1938 in which the taxpayer experienced an explosion in its plant which interrupted production and caused an operating loss for the year, the base period represented a period of normal earnings for the taxpayer. Such period also represented a period of normal earnings for the industry of which the taxpayer is a member. In the year 1938 the demand for the product manufactured by the industry of which the taxpayer is a member was 20 percent below the demand for such product for the average of the other years in the base period. The taxpayer's normal production and normal earnings for 1938 should be reconstructed upon the basis of the actual demand in that year, rather than upon the basis of the demand for the remaining years in the base period.

(b) *Business depression in base period on account of temporary economic circumstances.* If the taxpayer establishes that its business was depressed in the base period because of temporary economic circumstances unusual in the case of such taxpayer or because of the fact that an industry of which the taxpayer was a member was depressed by reason of temporary economic circumstances unusual in the case of such industry, the average base period net income of the taxpayer shall be considered to be an inadequate standard of normal earnings. For the purposes of this subsection a business shall be considered to be depressed if it realized low earnings or operating losses which resulted from such factors as a low volume of output of products or services, from a low volume of sales, from high manufacturing costs, from low sales price, or from a combination of such factors.

Only those economic circumstances which were temporary in the sense that they had little perceptible effect upon the long run prospects of a business, and which affected the taxpayer alone or an industry of which it was a member as distinguished from those economic events which were of a chronic or continuing character or which affected business in general, may furnish a basis for a claim for relief under section 722 (b) (2). An economic circumstance is temporary depending upon the character and nature of such circumstances rather than upon the mere length of time of its existence. Thus, the income of a declining business or industry which was depressed throughout the base period because of economic conditions of a chronic and continuing character which may be expected to depress the earnings of such business for an indefinite period is not an inadequate standard of normal earnings under section 722 (b) (2). For example, a traction company the earnings of which had been steadily reduced over a decade by increasing competition with motor trucks and by the use of private passenger vehicles might not be considered to suffer business depression by reason of temporary and unusual economic circumstances. Higher income resulting from increased patronage due to wartime restrictions upon the use of alternative methods of transportation should reasonably be regarded as excess profits. Low earnings are entirely normal in the case of such a chronically depressed taxpayer and are not rendered subnormal merely because an increased level of profits resulting from the effect of war conditions occurs during excess profits tax taxable years.

High costs of production because of high costs of material, labor, capital or other elements of production, low selling price of the finished product, low volume of sales due to a low demand for such product or the taxpayer's output, or other ordinary economic hazards to which business in general is subject and which have the effect temporarily of depressing income are ordinarily not sufficiently unusual economic circumstances to constitute income an inadequate standard of normal earnings under section 722 (b) (2). Such circumstances are to be expected during any period of normal earnings and are presumed to have been offset by counterbalancing economic circumstances causing higher than average profits in other years in the base period. Consequently, the presence of unfavorable economic factors during the base period years of a taxpayer is not unusual when the presence of such factors is usual in the case of an industry of which the taxpayer is a member, or if such industry is depressed, in the case of business in general for such years. Nevertheless unusual and temporary economic circumstances reflected in one or more of such factors may depress the business of the taxpayer substantially beyond the extent to which other members of an industry of which the taxpayer is a member are affected, or may depress the industry (including the taxpayer) substantially beyond the extent to which other industries are affected. In such case the presence of such circumstances is an adequate reason for establishing that actual average base period net income is an inadequate standard of normal earnings. However, the mere fact that the business of the taxpayer or of an industry of which it is a member, as the case may be, fluctuates widely under the impact of economic events or is operated at a lower level of earnings than other members of such industry or other industries, as the case may be, and thus is depressed to a greater degree by unfavorable economic conditions than such other members or industries does not of itself indicate that average base period net income is an inadequate standard of normal earnings.

As in the case of unusual and peculiar physical events interrupting or diminishing production, output, or operation (see § 30.722–3 (a)), a temporary economic circumstance is unusual in the case of a taxpayer or of an industry if its occurrence is not ordinarily encountered in the experience of such taxpayer or industry. However, a temporary economic circumstance which is usual in the case of the taxpayer is not rendered unusual because such circumstance is unusual in the case of an industry of which the taxpayer is a member or in the course of normal business experience in general. As to the definition of an "industry", see § 30.722–2 (b) (8).

An example illustrating § 30.722–3 (b) might be a taxpayer which for a long period of years conducted business with one customer which it lost during the base period because such customer decided to manufacture for itself the product it had formerly bought from the taxpayer. The taxpayer would be compelled to develop a new market. The average earnings of the taxpayer for the period of time during which the taxpayer was engaged in obtaining new customers would not represent an adequate standard of its normal earnings and would be sufficient cause for the establishment of a constructive average base period net income under section 722.

An example in which temporary economic events caused business depression during the base period of an industry of which the taxpayer was a member would be an industry the members of which (including the taxpayer) were engaged in a ruinous price war during several of the base period years. As a result of sales below cost in such years, the members of the industry sustained severe losses; when the price war was ended, the members again realized normal average earnings. The business of the taxpayer in such case would be depressed during the base period because of the fact that an industry of which the taxpayer was a member was depressed by reason of temporary economic events unusual in the case of such industry and the average base period net income of such taxpayer would be an inadequate standard of normal earnings.

If the temporary economic circumstances causing the taxpayer to be depressed in the base period did not affect an industry of which the taxpayer was a member, the constructive average base period net income of the taxpayer may be established in the same manner as is prescribed in the case of a taxpayer the base period production, output, or operation of which was interrupted or diminished by events unusual and peculiar in its experience, (See § 30.722–3 (a).) However, since the actual economic conditions existing in the years for which depression is claimed are those which caused such depression, normal earnings should be reconstructed not upon the basis of the actual economic factors affecting the taxpayer's production, costs, sales, and profits in such years but upon the basis of such factors as existed in such years in the case of the industry of which the taxpayer was a

member. Relationships existing between the taxpayer's production, costs, sales, and profits and the average production, costs, sales, and profits of the industry or other members of the industry, in other periods determined to represent periods of normal earnings for the taxpayer and the industry, or other members of the industry, may be utilized in determining the taxpayer's production, costs, sales, and profits for the base period. Depending upon the particular circumstances in the taxpayer's case normal earnings might be reconstructed for each base period year in which the taxpayer was depressed, or a constructive average base period net income might be determined for the base period as a whole without a reconstruction for separate years.

If the taxpayer was depressed in the base period because an industry of which it was a member was depressed by reason of temporary economic circumstances unusual in the case of such industry, the constructive average base period net income of the taxpayer might be determined by reference to a prior period in the experience of the taxpayer, or of an industry in which it is a member, which is established to be a period of normal earnings, or possibly by reference to the base period experience of comparable taxpayers or industries. Since actual economic conditions prevailing in the base period of the taxpayer were those which had the effect of causing depression in the industry of which the taxpayer was a member, such conditions should not form the basis upon which normal earnings of the taxpayer are reconstructed if such reconstruction is made for any of the years in the base period of the taxpayer or for such period in its entirety. In such case, relationships established between the economic conditions present in the case of the taxpayer during other periods and such conditions in the case of comparable taxpayers or industries may be used in determining the taxpayer's production, costs, sales, and profits which would have been realized had the temporary and unusual economic circumstances not affected the industry of which it was a member.

(c) *Business depression in base period because of variant profits cycle or sporadic and inadequately represented profits periods.* If the taxpayer establishes that its business was depressed in the base period by reason of conditions generally prevailing in an industry of which the taxpayer was a member subjecting such taxpayer either to a profits cycle which differs materially in length and amplitude from the general business cycle, or to sporadic and intermittent periods of high production and profits, and such periods are inadequately represented in the base period, the average base period net income of the taxpayer shall be considered to be an inadequate standard of normal earnings. To come within the provisions of section 722 (b) (3) and this subsection, it must be shown that the business of the taxpayer was depressed in the base period as a consequence of circumstances which are ordinary and usual in the case of an industry of which the taxpayer is a member; such business depression may not result from extraordinary and unusual events such as are necessary to invoke the provisions of section 722 (b) (2) and § 30.722–3 (b). Furthermore, the conditions producing the unusual profits cycle or the sporadic profits of the taxpayer must be shown to have prevailed generally throughout the past history of the industry and not to be peculiar to the base period alone. The ordinary circumstances existing in the case of the industry of which the taxpayer is a member and which produce business depression in the case of the taxpayer must also be established by the taxpayer to have produced business depression with respect to the industry generally during the base period. As to the definition of "industry" see § 30.722–2 (b) (8).

(1) *Unusual profits cycle.* No categorical definition or description can be given to the concept of the general business cycle. The term does not refer to any particular business index prepared by any public or private financial, economic, or statistical organization, or combination of such indices. A taxpayer does not establish a claim for relief under section 722 (b) (3) (A) merely by comparing its own profits cycle, or the profits cycle of an industry of which it is a member, with one or more general business indices prepared by any public or private financial, economic, or statistical organization, and by showing a variance between its own profits cycle and such other general business indices.

On a national industry-wide basis, the four years beginning January 1, 1936, and ending December 31, 1939, represent a period of normal average earnings in the experience of business in general. If, due to conditions entirely normal in the experience of an industry of which the taxpayer was a member, such period was not correspondingly a time of normal average earnings in the case of the industry and of the taxpayer in the light of the prior experience of such industry and taxpayer, the profits cycle of the taxpayer may be considered to be different from the general profits cycle.

The profits cycle of a taxpayer will be deemed to differ in length and amplitude from the general business cycle if its period of normal profits had not occurred during the base period but at some prior time entirely without the base period, or partly without and partly within such period. It is not necessary that the length of the taxpayer's profits cycle be longer or shorter than four years nor is it necessary that the crests and troughs of such profits cycle vary from the level of high and low profits of the general business cycle. Only in case the normal average earnings of the taxpayer and an industry of which it is a member are substantially greater than the average profits earned during the excess profits tax base period will the profits cycle of a taxpayer be considered to differ materially from the general business cycle.

The mere fact that the earnings of the taxpayer and an industry of which it was a member are not as high during the base period as they were during some prior period in the experience of such taxpayer or such industry does not necessarily mean that normal average earnings are greater than earnings during the base period. Normal average earnings are average earnings for all periods of normal earnings in the experience of such taxpayer or such industry. It is inevitable that some periods of normal earnings should be higher or lower than other such periods. Consequently the fact that the earnings of the taxpayer and of an industry of which it is a member are slightly lower than the level of normal average earnings is not of itself an indication that the profits cycle of the taxpayer or the industry varies materially from the general business cycle.

A taxpayer which claims to be a member of an industry in which conditions prevail which subject the taxpayer to a profits cycle differing materially from the general business cycle must establish that the business experience both of itself and of such industry is susceptible of segregation into a cyclical pattern. Types of industries, the business cycles of which may not necessarily coincide with the general business cycle, are industries connected with the construction industry. It is well established that over the past three decades there has been a building cycle which generally has embraced two or more of the general cycles of business profits. If the base period embraced only the subnormal years of the profits cycle of a branch of the building industry, the members thereof may be able to establish that their average base period net income does not represent an adequate standard of normal profits. If, however, the profits cycle of such branch of the building industry and of the taxpayer in a particular locality in which the operations of such branch and of the taxpayer were encompassed followed the pattern of the general business cycle in the base period so that such period represented a period of average normal profits for the taxpayer, no basis would exist for a claim for relief under section 722 (b) (3) (A).

The constructive average base period net income of a taxpayer which was depressed in the base period on account of a variant profits cycle might be determined by reference to one or more prior periods in the experience of the taxpayer or of the industry of which it was a member which represents a period of normal earnings properly attributable to such taxpayer. These periods need be of no specified duration except that they should not be less than three years. If any one such period is used it should be established that with respect to the taxpayer and the industry of which it was a member, such period bears the same relationship to the profits cycle of the taxpayer and the industry which the base period (representing a period of normal earnings of business in general) bears to the general business cycle. In case no such prior periods are available, if proper relationships based upon comparative profit and loss statements and balance sheets can be established, the constructive average base period net income might be determined by reference

to the average base period net income of comparable taxpayers or industries for which the base period represents a period of normal earnings. In such case, actual economic factors of production, costs, demand, sales, and profits experienced by the taxpayer during the base period should not generally serve as a limitation upon any normal earnings reconstructed for the taxpayer for the base period.

(2) *Sporadic profits inadequately represented in the base period.* The characteristic distinguishing the type of case described in section 722 (b) (3) (B) from that in section 722 (b) (3) (A) is that in the latter case the taxpayer has an earnings experience which can be segregated into definite cycles, whereas in the former case (the type of case described in this paragraph) no such cyclical segregation can be made. In case the taxpayer is subjected to intermittent periods of high production and profits, the prosperous years of the taxpayer will occur at irregular and unpredictable intervals, and may depend upon fortuitous combinations of advantageous circumstances, as for example the juxtaposition of a good crop and a good market. If the base period of the taxpayer does not include these prosperous years, its earnings during such period will not be an adequate measurement of average normal earnings.

Proof that a year of high production and profits did not occur during the base period is not of itself sufficient to establish that the base period did not represent a period of normal earnings. The actual average base period net income computed under section 713 (d) may approximate either the average earnings of periods of normal earnings, which include years of very high profits as well as years of low profits, or the average earnings for the entire experience of the taxpayer. Consequently it must be established not only that the base period did not include one or more years of high profits irregularly experienced by the taxpayer but also that the level of earnings for periods of average normal earnings which include such years or the level of earnings for the entire period in which the taxpayer was in existence is substantially higher than the level of earnings during the base period. Since the concept of normal earnings does not contemplate a fixed and inflexible amount but envisions a level of earnings which represents normal earning capacity of a business, the mere fact that actual average base period net income is less than an amount which might be determined by reference to some period claimed to represent normal earnings or by reference to an average of earnings over the entire economic life of a business does not establish that such average base period net income is an inadequate standard of normal earnings.

A taxpayer which claims to be a member of an industry in which conditions prevail which subject the taxpayer to sporadic and intermittent periods of high production and profits must establish that business depression was encountered during the base period because of such conditions. It must also establish that such conditions were not peculiar to it alone in the base period but were also present in the case of such industry.

A taxpayer does not establish eligibility for relief under section 722 (b) (3) (B) merely by showing that annual periods of high profits have occurred irregularly in the past experience of the taxpayer. Such periods of high earnings may have resulted from windfall profits or from unusual circumstances befalling the taxpayer, or an industry of which it is a member, and not as the result of normal conditions under which the taxpayer's usual operations are carried on. Only in case high earnings which have occurred in prior years are directly attributable to factors normal in the case of the taxpayer and of an industry of which it is a member, may such high periods of production and profits be considered grounds for relief under section 722 (b) (3) (B).

Depending upon actual proof, a possible example of an industry operating under conditions which subject its members to sporadic and intermittent periods of high production and profits might be an industry engaged in the preparation and canning of fruit. Profits would be dependent upon the size of the pack and the market obtainable. Suppose that the records of a taxpayer in such industry indicate that ordinarily in one out of every three years the earnings were substantially in excess of the average of the other three years, and that no prosperous years occurred in the base period, as follows:

Net Income (in Thousands of Dollars)

1926	50	1933	25
1927	10	1934	20
1928	15	1935	48
1929	55	1936	15
1930	12	1937	28
1931	45	1938	18
1932	18	1939	10

If the records of the industry of which the taxpayer is a member show a similar pattern, the average base period net income of such concern would not be deemed to be an adequate standard of normal earnings and such taxpayer would be entitled to relief under section 722 (b) (3) (B).

The constructive average base period net income of a taxpayer depressed during the base period on account of the failure of such period to reflect one or more years of high profits sporadically enjoyed by the taxpayer might be determined in the same manner as in the case of a taxpayer with a variant profits cycle. (See § 30.722–3 (c) (1).) In a proper case a standard of normal earnings might fairly be determined as an average of earnings of the business in its experience prior to the beginning of its first excess profits tax taxable year (but not after May 31, 1940), and a reasonable determination of excess profits could be made as the excess of the profits during a current excess profits tax taxable year over such standard.

(d) *Commencement or change in character of business.* If the taxpayer has commenced business or has changed the character of its business either during or immediately prior to the base period, and if the taxpayer establishes that its average base period net income does not reflect the normal operation for the entire base period of a business so commenced or changed in character, the average base period net income shall be considered to be an inadequate standard or normal earnings.

No arbitrary temporal limitations can be provided to circumscribe the concept of "immediately prior to the base period" for the purposes of section 722 (b) (4) in the case of a business commenced or changed in character at such time. Nor does the fact that a taxpayer has commenced business or changed the character of its business within one or two years prior to the base period necessarily establish eligibility for relief under section 722 (b) (4). Generally, business experiences a time lag between the time that new operations are commenced, reflecting either the starting of a new business or of a business essentially different in character from an old business, and the attainment of a normal earning level. If all or a portion of this time lag occurs during the base period, the earnings during such period cannot be said to represent normal average earnings.

Generally, the commencement of business or the change in character of a business will be deemed to have occurred immediately prior to the base period if under normal conditions the normal earning level of a business so commenced or changed would not be realized until some time during the base period and would be principally and directly related to such commencement or change. However, if a taxpayer, which has commenced business immediately prior to the base period, has reached its level of normal operations prior to such period, but has sustained a loss in its first base period year because of the occurrence of an unusual event or circumstance, such as a flood interrupting production, the average base period net income will not be considered to be an inadequate standard of normal earnings because the taxpayer has commenced business immediately prior to the base period. Any relief sought by such a taxpayer should be based upon interruption of production under section 722 (b) (1) and § 30.722–3 (a).

The following examples are illustrations of the provisions of this subsection: Corporation A which makes its returns on a calendar year basis, and which until 1934 manufactured snuff at a loss, in that year changed to the manufacture of cigars. Due to normal difficulties in establishing trade connections and in establishing its product, it did not realize normal profits until 1938. Such corporation is deemed to have changed the character of its business immediately prior to the base period. Corporation B which makes its returns on the calendar year basis converted its business in 1934 from the manufacture of general textiles to the manufacture of automobile upholster. It immediately realized a level of earnings which were deemed to be reasonable for such business and enjoyed such earnings until 1938. In that year it made a profitable connection with a

large automobile manufacturer, and as a result realized larger profits. The fact of such larger profits due to this connection is not principally and directly attributable to the change in the character of the business in 1934, and such fact is not a normal and inevitable result of such change. Consequently the change in the character of the business in 1934 is not considered to have occurred immediately prior to the base period for the purposes of section 722 (b) (4).

If the business of a taxpayer which was commenced or changed in character either immediately prior to or during the base period was growing and expanding so that by the end of the base period it did not reach the earning level which it would have attained had the business been commenced or changed in character two years prior to the time of the actual event, the taxpayer shall be deemed to have commenced business or changed the character of its business at such earlier time. In order to establish that its actual average base period net income is an inadequate standard of normal earnings, the taxpayer shall establish that the actual average base period net income does not reflect the normal operation for the entire base period of a business commenced or changed in character at such earlier date. In determining whether the business of the taxpayer was growing or expanding by the end of the base period, consideration may be given to the taxpayer's actual business experience during and immediately prior to the base period, including its rate of growth, to a comparison of the taxpayer's experience and the experience for a comparable period of other members of an industry of which the taxpayer is a member, to the experience and rate of growth of such members after the commencement or change in character of their business, and to the future prospects of the business of the taxpayer under normal conditions reasonably ascertainable at the end of the base period. Events occurring or existing after December 31, 1939, may not be considered in determining whether the taxpayer was growing by the end of the base period, or if so, to the extent thereof.

An example illustrating the preceding paragraph would be a corporation which was organized in 1938 and started the development of a delivery route to sell food products. In 1938, it had a net loss; in 1939 a moderate profit. Its record of earnings is as follows:

Net Income (in Thousands of Dollars)

1938	−5
1939 (first quarter)	−1
1939 (second quarter)	2
1939 (third quarter)	4
1939 (fourth quarter)	7

Its steady growth together with other factors indicates that if it had started business two years earlier its earning level at the end of the base period would have been considerably higher. Such taxpayer shall be deemed to have started business in 1936, and its average base period net income would not be considered an adequate reflection of normal operations for the entire base period of the type of business which would have resulted at the end of the base period if the taxpayer had started business in 1936.

Another example would be a taxpayer which immediately prior to and during the base period was engaged in research and development of an American raw material for the manufacture of a product not theretofore practicable of manufacture in the United States. In early 1938 a process was perfected for such manufacture. In that year, the taxpayer entered into sales contracts, commenced a program of building plant and equipment (ultimately completed in 1941), and began to supply its customers in September, 1939. It operated with low invested capital and its earnings did not reach by the end of the base period the level which would have been reached if the taxpayer had commenced business two years earlier. In such case the average base period net income will be considered to be an inadequate standard of normal earnings, and the taxpayer will be deemed to have commenced business two years prior to the actual commencement.

For the purposes of section 722 (b) (4), normal operations refers to normal operations throughout the entire base period of the business commenced or to which such business was changed immediately prior to or during the base period, and to the normal earnings reconstructed on the basis of such normal operations for such entire period. The taxpayer may have commenced business or changed the character of its business after the beginning of the base period; such commencement or change although considered to have been effected two years prior to the actual event might still occur after the beginning of the base period. Neither fact shall prevent the reconstruction of normal earnings for the entire base period, including the time prior to the date of the actual commencement or change or to the date upon which the commencement or change is considered to have occurred.

If the business of the taxpayer has reached by the end of the base period the earning level it would have reached had it been commenced or changed in character two years prior to such event, normal earnings for the entire base period shall be reconstructed upon the basis of the level of normal operations actually attained during the base period and upon the basis of the character, nature, and size of the business actually developed during the base period. If the business of the taxpayer is considered to have been commenced or changed in character two years prior to such event, normal earnings for the entire base period shall be based upon the level of normal operations, and upon the character, nature, and size of the business which would have been developed by the end of the base period if the business had been commenced or changed at such earlier date.

If a business which was commenced or changed in character either during or immediately prior to the base period did not reach, by the end of the base period, the earning level it would have reached had it been commenced or changed in character two years earlier, the earning level which it would have reached had such events occurred at such an earlier date will be dependent upon reconstructed, as opposed to actual production, costs, demand, sales, and selling prices. It may not be possible to reconstruct demand, sales, and selling prices based upon actual economic conditions existing within the framework of the base period. In certain cases actual demand, sales, and selling prices might not represent reasonable limitations upon the earning level which the taxpayer would have reached had its business been commenced or changed in character two years prior to the actual occurrence. Moreover the fact that a business is deemed to have been commenced or changed two years earlier implies the existence of conditions not necessarily present in the period for which reconstruction is being made. Consequently, in proper cases, demand, sales, and selling prices may be established upon the basis of certain assumptions not inconsistent with the fact that the taxpayer is considered to have commenced business or changed the character of its business two years prior to the actual commencement or change and not inconsistent with the experience of similar taxpayers which have reached a level of normal earnings, or of an industry of which the taxpayer is a member, which might furnish an indication of economic factors to be encountered by an expanding business.

Although actual economic factors influencing the taxpayer's earnings for the period prior to its attainment of normal operations may not reflect the results of such operations and consequently might not furnish adequate criteria for determining the normal earnings for such period, regard might be had to such factors to the extent that they might be determinants in establishing the taxpayer's earning capacity. Thus, if the taxpayer's business is a continuation of a preexisting business enterprise, regard might be had to the experience and earning capacity of such enterprise in order to ascertain normal earnings to be attributed to the taxpayer. Likewise, if a corporation is reorganized in the base period into two new corporations, the excess profits net income of each of the new corporations for the taxable years in the base period in which each was not in existence may be determined from that part of the business of the original corporation operated by each of the new corporations and that part of the excess profits net income of the original corporation attributable to such part of the business.

If the business of the taxpayer, deemed to have been commenced or changed in character two years prior to such event, has not reached by the end of the base period its level of normal operations and of normal earnings because of the interruption or diminution of production, output, or operation because of events, unusual and peculiar in the experience of the taxpayer (section 722 (b) (1)), or because of adverse temporary economic

circumstances unusual in the case of the taxpayer or an industry of which it was a member (section 722 (b) (2)), or because the taxpayer was a member of an industry in which conditions prevailed which would subject the taxpayer to a variant profits cycle or to sporadic and intermittent periods of high production and profits which are not represented in the base period (section 722 (b) (3)), or because of other factors adversely affecting the business of the taxpayer in the base period (section 722 (b) (5)), the principles pursuant to which relief is determined in such cases shall be taken into account in determining the normal operations and normal earnings of the taxpayer. Thus, a taxpayer which was organized and commenced business during the base period might be a member of an industry in which conditions prevailing in such industry subjected its members to a profits cycle materially different from the general business cycle. If the base period represented the trough in such cycle and the average base period net income of the members of the industry represented an inadequate standard of normal earnings, the normal operations and normal earnings of the taxpayer might be determined by reference to one or more other periods in the experience of the industry. Relationships existing between the taxpayer's operations in the base period and the operations of other members of the industry, or of the industry as a whole, might be taken into account. (See § 30.722–3 (a).)

The fact that income for the entire base period is to be reconstructed upon the basis of the level of normal operations actually attained during the base period or upon the basis of the level of normal operations which would have been reached had the business been commenced or changed two years earlier, does not necessarily mean that the highest level of earnings actually or constructively reached during the base period is to be ascribed to the entire base period. The earning level of business usually is fluctuating rather than constant. Normal earnings to be attributed to the taxpayer for the base period must follow such pattern. In determining such normal earnings regard may be had to the earnings cycle during the base period of other taxpayers engaged in similar businesses, of other members of an industry of which the taxpayer was a member, of such industry as a whole, and to relationships existing between the taxpayer's production, costs, sales, and profits during its years of normal operations and similar factors in the case of such other taxpayers or industry.

Events or conditions occurring after December 31, 1939, may not be taken into account in determining the constructive average base period net income of a taxpayer which during the base period has commenced business or changed the character of its business. Consequently, the level of normal operations which would have been reached by a taxpayer which is considered to have commenced business or to have changed the character of its business two years prior to the actual event shall not be determined by attributing to the base period the results of the taxpayer's operations for its first two excess profits tax taxable years beginning after December 31, 1939, or for any period of time after such date.

Since the amount of normal earnings in the case of a taxpayer which is considered to have commenced business or changed the character of its business two years prior to the actual event is based upon a reconstructed business experience which has been lengthened two years, such amount may exceed the actual earnings realized by the taxpayer during its first or second excess profits tax taxable year. Consequently, the reconstructed normal earnings which would be used as the constructive average base period net income after the second excess profits tax taxable year may not constitute a fair and just amount to be used for the purposes of the excess profits tax for the first or second excess profits tax taxable year. Therefore, in determining the constructive average base period net income to be used in computing the excess profits tax or the unused excess profits credit for the first or second excess profits tax taxable year, the fair and just amount representing normal earnings should be based upon the actual earning capacity which, as of the end of its base period, the taxpayer could reasonably have expected to reach under normal conditions during such first or second excess profits tax taxable year. If the excess profits net income for the taxpayer's first or second excess profits tax taxable year reflects an earning capacity greater than that reasonably established for such years, the amount by which such excess profits net income exceeds the excess profits credit based upon constructive average base period net income represents adjusted excess profits net income subject to excess profits tax. If the excess profits net income for such first or second taxable year is less than the excess profits credit based upon the constructive average base period net income, the difference is the unused excess profits credit for such year under section 710 (c). (See § 30.710–3.)

A change in the character of the business for the purposes of section 722 (b) (4) must be substantial in that the nature of the operations of the business affected by the change are regarded as being essentially different after the change from the nature of such operations prior to the change. No change which businesses in general are accustomed to make in the course of usual or routine operations shall be considered a change in the character of the business for the purposes of section 722 (b) (4). Trade custom and practice may be taken into account in determining whether an essential difference in the character of the business has occurred. A change in the character of the business, to be considered substantial, must be reflected in an increased level of earnings which is directly attributable to such change. If such increased level of earnings is not actually realized in the base period, the taxpayer is not precluded from establishing a change in the character of the business provided it can establish that such increased level would have been attained in the base period but was hindered or delayed by unusual and peculiar events or economic circumstances. Such proof may not take into account any increase in earnings after December 31, 1939, as indicative of the fact that a change in the character of the business was productive of increased earnings.

A change in the character of the business includes changes resulting from the following activities:

(1) *A change in the operation or management of the business.* The introduction of new or substantially different processes of manufacturing or of new or substantially different methods of distribution would constitute a change in the operation of a business; the hiring of new key managing personnel or the adoption of materially new basic management policies by the old management resulting in drastic changes from old policies would constitute a change in the operation or management of the business. However, ordinary technological improvements developed in the course of routine business operations or changes in operating or supervisory personnel normally experienced by business in general and having no effect upon basic business policies would not be considered a change in the operation or management of the business.

Examples of a change in operation or management might be the following:

Corporation A was reorganized in 1936, and the new directors and officers initiated drastic changes in management, sales, and production policies which were not reflected in the corporation's earnings until 1939; a change in management would be deemed to have occurred. In 1937, corporation B engaged in coal mining converted from a system of hand loading, under which it had lost money, to mechanized loading which reduced operating costs and resulted in profits; a change in operations has occurred. Likewise corporation C which prior to 1938 marketed its product from door to door, in such year changed such sales methods to direct sales to retailers and thereafter realized profits; it would be deemed to have effectuated a change in operations. Corporation D experienced a severe reduction in the volume of its business due in part to economic conditions but principally to financial mismanagement. Early in 1939 new management was provided, new financial policies were adopted, and the volume of business and of earnings was greatly increased as a result thereof; corporation D is deemed to have made a change in the management of its business.

(2) *A difference in the products or services furnished.* A product or service is different from another product or service if the trade custom or practice treats it as a product or service of a different class. A mere improvement in the product or service does not constitute a difference in the product or service. For example, a corporation in one year of its base period was engaged in both the radio broadcasting business and the department store business, and on January 1, 1940, was engaged only in the radio broadcasting business, the department store business having been discontinued. The corporation is deemed

to have changed the character of its business. The same is true of a radio station which for three years in its base period was operated by a seed and nursery company. Beginning in 1939, the radio station was operated strictly as a commercial venture, the seed and nursery business having been discontinued. Another taxpayer manufactured and sold a variety of products, some under patents it had developed. During the base period it engaged in extensive research, developed new products, perfected and obtained a patent, and employed new marketing methods, enabling it to sell a leading product never before sold in the new markets. A difference in the products furnished is deemed to have resulted.

(3) *A difference in the capacity for production or operation.* A difference in the capacity for production or operation exists not only where new facilities have been acquired or old facilities enlarged, but also where latent productive or operative equipment is utilized and where newly developed techniques adopted with respect to existing facilities expand the productive or operating capacity of such facilities. Also included are cases where liquid working capital has been increased admitting of an enlarged scope of operations. A radio broadcasting station increased its power during the base period, necessitating changes and expansion of the physical property of the station, and thus enlarged the area it served. The station was thereby enabled to increase its volume of advertising and advertising rates. Such radio station is deemed to have effected a change in its capacity for production or operation. A taxpayer, in addition to its regular business of manufacturing dental equipment, in 1937 entered the field of manufacture of custom-built precision parts and instruments for the aviation industry, using surplus capacity for the purpose. Such activities would be considered to result in a change in the capacity for production and operation and the normal expansion, including expansion of the line of products which it would have experienced in this new field had it entered such field two years earlier, would be considered.

(4) *A difference in the ratio of nonborrowed capital to total capital.* As used in this paragraph, total capital is the sum of the average equity invested capital and the average borrowed capital for the taxable year. If a taxpayer operated during the base period in whole or in part on borrowed capital, the interest paid or accrued on such capital would be a deduction in computing average base period net income. If during the base period borrowed capital was reduced so that at the end of its base period the interest deduction was reduced, deductions for interest during the base period would be greater than such deductions during the excess profits tax taxable years. If the total capital at the end of the base period was as large or larger than the total capital prior to the reduction of the borrowed capital, the average base period net income, to the extent that it was reduced by the interest deduction, would furnish an inadequate standard for determining excess profits. If, however, the total capital at the end of the base period was reduced by the amount by which the borrowed capital was reduced, the average base period net income would not necessarily furnish an inadequate standard for determining excess profits since the total amount of capital producing excess profits net income would also be reduced. For the purposes of section 722 (b) (4) a difference in the ratio of nonborrowed capital to total capital does not obtain merely because borrowed capital has been reduced or because equity invested capital has been increased. Such difference arises only when there is a decrease in borrowed capital offset by a corresponding increase in equity capital. In such event the amount of interest on borrowed capital so retired during the base period, which has been deducted in computing average base period net income shall be disallowed as a deduction in computing constructive average base period net income. For the purposes of the preceding sentence, the amount of borrowed capital retired during the base period shall be limited to the increase in equity invested capital (whether by amounts paid in for stock, as paid-in surplus, or as contributions to capital, or by the amount of accumulated earnings and profits) for such period.

(5) *The acquisition before January 1, 1940, of all or part of the assets of a competitor, with the result that the competition of such competitor was eliminated or diminished.* The form in which such acquisition was accomplished and whether or not in a transaction in which taxable gain or loss was recognized is immaterial. For example, two competing newspapers were operating at a loss during all or part of the base period. Prior to January 1, 1940, the first newspaper purchased the franchises and other assets of the second newspaper and as a result of this transaction the condition of the surviving paper was much more promising. A difference in the character of the business of the taxpayer has occurred.

Any change in the capacity for production or operation of the business consummated during an excess profits tax taxable year ending after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940, or any acquisition before May 31, 1941, from a competitor engaged in the dissemination of information through the public press, of substantially all the assets of such competitor employed in such business with the result that competition between the taxpayer and the competitor existing before January 1, 1940, was eliminated, shall be deemed to be a change on December 31, 1939, in the character of the business.

If the taxpayer establishes that a change in the character of the business deemed to exist on December 31, 1939, actually entered into the operations of the business during the taxable year and that increased earnings would have been realized during the base period (or during some other period of normal earnings, if the base period is not a period of normal earnings) if the business so changed was in full operation during such period, the average base period net income shall be deemed to be an inadequate standard of normal earnings. The taxpayer must also establish by competent evidence that it was committed prior to January 1, 1940, to a course of action leading to such change. Such a commitment may be proved by a contract for the construction, purchase, or other acquisition of facilities resulting in such change, by the expenditure of money in the commencement of the desired change, by the institution of legal action looking toward such change, or by any other change in position unequivocally establishing the intent to make the change and commitment to a course of action leading to such change. The change in the capacity for production or operation referred to in the preceding paragraph means a change such as described in paragraph (d) (3) of this section.

A change in the character of the business deemed to be a change on December 31, 1939, pursuant to the last sentence of section 722 (b) (4), may not be reflected at all in the business of the taxpayer for an excess profits tax taxable year if such change had not yet been consummated by such year, may be partially reflected in such year to the extent that the new productive or operating capacity was utilized, or may be reflected in full for such year if the full normal capacity for production or operation so changed entered into the business of the taxpayer for such year. Consequently it is possible that the level of normal earnings based upon full normal operating capacity during the base period might exceed the level of earnings reached during an excess profits tax taxable year based upon but a portion of full operating capacity. No accurate computation of excess profits or of an unused excess profits credit for an excess profits tax taxable year can reasonably be made with respect to a taxpayer which has not reached full normal operating capacity in such year based upon a comparison of normal earnings representing full operating capacity of such change with excess profits net income from operations for such year based upon but a portion of normal operating capacity of such change. With respect to such an excess profits tax taxable year, the only fair and just standard of normal earnings to be included in the constructive average base period net income as attributable to such change must be based upon normal earnings attributable to the level of operations of the changed capacity for production or operation which normally would have been reached by the taxpayer during such year.

The extent to which the change in the capacity for production or operation entered into the business of the taxpayer for an excess profits tax taxable year shall be deemed to be the extent to which a change in capacity for production or operation existed on December 31, 1939. Therefore the fair and just amount to

be included in the constructive average base period net income, as attributable to such change, in computing excess profits for any taxable year of a taxpayer which has consummated a change in capacity for production or operation after December 31, 1939, under section 722 (b) (4), and prior to the time that the full normal earning capacity of such change has been reached, shall be determined upon the basis of the extent to which the changed productive or operating capacity is reflected in the taxpayer's business for such year. The extent to which such changed capacity is reflected in the business for a taxable year shall be based upon the length of time during the taxable year which the changed capacity for production or operation was utilized and the level of normal production or operation which was reached as the result of such changed capacity.

For an excess profits tax taxable year, prior to the attainment of full normal operating capacity, the fair and just amount of normal earnings attributable to a change in capacity for production or operation consummated after December 31, 1939, may be determined either by multiplying the full normal earnings attributable to normal operating capacity for the base period (or a comparable period) by a percentage representing the extent to which such change is reflected in the taxpayer's business for such year, or by determining normal earnings upon the basis of the operating level which normally would have been reached by such change during such year. To the extent necessary to determine the nature of the change in the capacity for production or operation, and the extent to which such change has been reflected in the taxpayer's business, regard may be had to facts existing after December 31, 1939. Although no regard should be had to actual earnings after December 31, 1939, as indicative of the amount of normal earnings attributable to the change, ratios existing between such earnings and earnings from other operations of the taxpayer or of similar taxpayers or an industry of which the taxpayer is a member may be taken into account. The principles applicable to the determination of the fair and just amount representing normal earnings to be included in constructive average base period net income as attributable to a changed capacity for production or operation shall also be applicable to the determination of such amount in the case of a taxpayer which has before May 31, 1941, acquired substantially all the assets of a competitor engaged in the dissemination of information through the public press, pursuant to the last sentence of section 722 (b) (4).

The determination of normal earnings both in the case of a taxpayer consummating a change in capacity for production or operation after December 31, 1939, and in the case of a taxpayer acquiring before May 31, 1941, assets of a competitor engaged in the dissemination of information through the public press, may be made in the same manner as the determination of normal earnings of a taxpayer which is deemed to have commenced business or to have changed the character of its business two years prior to the actual event.

In no event may any portion of a constructive average base period net income which is attributable to a change in the capacity for production or operation, or to the acquisition of assets of a competitor engaged in disseminating information throught the public press with a concomitant elimination of competition be allowed in the computation of the excess profits tax for any taxable year in which such increased capacity or acquisition of assets and the effect of the elimination of competition do not enter into the business of the taxpayer, regardless of the fact that facilities giving rise to such increased capacity or representing assets acquired have been completely constructed or have been actually acquired in such year. For any excess profits tax taxable year subsequent to the year in which the changed capacity or the assets of the competitor and the elimination of competition have been reflected in the business of the taxpayer to the extent of full normal earning capacity, the constructive average base period net income shall include the entire amount of normal earnings attributable to such increased capacity or acquired assets and elimination of competition, regardless of the fact that in such later year the changed capacity or the acquisition of assets and the effect of the elimination of competition are not reflected to the extent of full normal earning capacity.

If a change in the capacity for production or operation, or the acquisition of assets of a competitor, occurs after December 31, 1939, amounts of money or property paid in to the taxpayer after the beginning of its first excess profits tax taxable year might be used in effectuating such change or acquisition. The amounts of money or property so paid in would constitute capital additions to be used in the determination of the net capital addition for an excess profits tax taxable year under section 713 (g) and section 743, and the excess profits credit based on income is increased by 8 percent of the net capital addition under section 713 (a) (1) (B). In such case the amount otherwise determined as the fair and just amount representing normal earnings attributable to a changed capacity or an acquisition of assets and elimination of competition would duplicate that portion of the excess profits credit based on the net capital addition. Consequently, in computing the constructive average base period net income attributable to the change in the character of the business described in the last sentence of section 722 (b) (4), the fair and just amount representing normal earnings determined without regard to the provisions of this paragraph to be used in the computation of the excess profits tax for a taxable year shall be reduced by an amount equal to 8 percent of that portion of net capital addition for such year which has been utilized in constructing or acquiring the facilities giving rise to such change. Such portion of the net capital addition so utilized shall be deemed to be equal to that percentage of the net capital addition for such year as that portion of the aggregate of the daily capital additions considered to have been expended in the construction or acquisition of such facilities is of the aggregate of the daily capital additions. In no event, however, shall the amount of the constructive average base period net income attributable to the change be reduced to less than zero.

The effect of the last sentence of section 722 (b) (4) may be illustrated by the following examples:

In 1939, corporation M, a mining company, began the development of a new mine and the construction of a new plant to be used in connection with such mine. The sum of $3,000,000 was expended upon this project in 1939 and 1940. Of this amount $1,000,000 was paid in for stock of the corporation in 1939 and $2,000,000 was paid in for stock in 1940. $500,000 additional was paid in for stock in 1940 and used as working capital. Assume that for 1941 and 1942, the net capital addition is $2,250,000. The mine and plant were completed and entered production on October 1, 1941, thus being in operation for three-twelfths of the year 1941. During 1941, the level of production reached by the new facilities was 25 percent of normal operating capacity. The facilities were in operation during the entire year 1942 and reached a level of production of 75 percent of normal operating capacity. There will be considered to be a change in the character of the business on December 31, 1939, for purposes of the application of section 722 to the year 1941 and to subsequent years. No claim for relief based upon such facts may be made for the year 1940 since the new facilities were not a part of the taxpayer's business operations for such year. If it is assumed that full normal earnings attributable to full normal operating capacity is $400,000, the fair and just amount to be included in constructive average base period net income for 1941 attributable to the new facilities is $25,000 (three-twelfths multiplied by 25 percent of $400,000, *i. e.*, three-twelfths multiplied by $100,000). This amount should be reduced by $144,000 representing an amount equal to 8 percent of that portion of the net capital addition which has been utilized in the construction of the new facilities (8 percent of $\frac{20}{25}$ of $2,250,000). Since the reduction of $144,000 exceeds the amount of $25,000 there is no constructive average base period net income attributable to the new facilities to be used in computing the excess profits tax for 1941. The fair and just amount to be included in constructive average base period net income for 1942 attributable to the new facilities is $300,000 ($400,000 multiplied by 75 percent). This amount should be reduced by $144,000 computed as provided above. The excess of $300,000 over $144,000, i. e., $156,000, is the amount of constructive average base period net income attributable to the new facilities to be used in computing the excess profits tax for 1942.

Radio broadcasting station R entered into a contract in July 1939, to change its basic network affiliation from a network with a low volume of business and local programs to one of the larger networks with a very large volume of business and nation-wide programs. This change in the operation of the business enabled the station greatly to increase its revenue, and to serve a larger audience. Although the contract with the new network was signed in July, 1939, actual broadcasting of the new network's programs did not start until March, 1940. Corporation R, however, is considered to have been committed to a course of action prior to January 1, 1940, which led to a change in capacity

for production and operation consummated after December 31, 1939, and thus to have established a change in the character of its business on December 31, 1939.

In April, 1941, an evening newspaper acquired substantially all of the assets employed in publishing a competitive morning newspaper with the result that competition between the taxpayer and the competitor existing prior to January 1, 1940, was eliminated. A change in the character of the business is deemed to have occurred on December 31, 1939, and the taxpayer is eligible for relief under section 722 for the year 1941 and subsequent years.

(e) *Other factors affecting business and resulting in inadequate standard of normal earnings.* If the taxpayer establishes the presence during or immediately prior to the base period of one or more factors which may reasonably be considered to have influenced adversely operations during the base period and to have resulted in unusually low earnings during the base period, and the application of section 722 to the taxpayer would not be inconsistent with the principles underlying the provisions of section 722 (b) and with the conditions and limitations enumerated in such section, the average base period net income shall be deemed to be an inadequate standard of normal earnings.

The purpose of section 722 (b) is to make eligible for relief under section 722 a corporation which would normally use the excess profits credit based on income in ascertaining income subject to excess profits tax but which has experienced conditions affecting it or an industry of which it was a member resulting in an average base period net income which is not an adequate reflection of average normal earnings and which consequently is not an adequate measurement for the determination of excess profits. The excess profits tax is specifically designed to recapture a portion of profits due to the expansion and creation of activities by the war effort. Profits earned during the current excess profits tax return period can therefore furnish no competent guide to what constitutes normal average earnings. The mere fact that the average base period net income of a taxpayer is somewhat, or even considerably, smaller than its anticipated or actual excess profits net income does not necessarily mean that the average base period net income is an inadequate standard of normal earnings. Such average base period net income may reflect the result of normal operations; a larger current income may reflect the effects of the war economy and truly constitute excess profits to be taxed. Since current excess profits net income cannot be taken into account in determining constructive average base period net income, the mere disparity between average base period net income and current income is no basis for a claim for relief under section 722 (b) (5).

Eligibility for relief under section 722 (b) (5) and the determination of a constructive average base period net income must not be inconsistent with the principles, conditions, and limitations contained in section 722 (b) (1), (2), (3), and (4) and § 30.722–3 (a), (b), (c), and (d).

§ 30.722–4 *Determination of excessive and discriminatory tax; taxpayer not entitled to excess profits credit based on income.* Section 722 (c) defines an excessive and discriminatory excess profits tax, computed without regard to the provisions of section 722, for an excess profits tax taxable year, in the case of a taxpayer which is not entitled to use the excess profits credit based on income pursuant to section 713 (or pursuant to section 742, if the taxpayer has acquired the assets of another corporation). This section applies to taxpayers coming into existence after December 31, 1939, which are not acquiring corporations under the provisions of section 740 (a), and to foreign corporations compelled to use the excess profits credit based on invested capital (see section 712 (b)). The excess profits tax of such corporations, computed without regard to section 722, shall be considered to be excessive and discriminatory if the excess profits credit based on invested capital is an inadequate standard for determining excess profits because of one or more of the following reasons:

(a) The business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income. Corporation M commenced business in 1940. Its business was of a class which required little invested capital but necessitated the establishment of contacts with the trade in which it would obtain its customers. It lost money during its first two years of operation, but by 1942 had built up patronage and showed a considerable profit. If its invested capital was very small, its excess profits credit based on invested capital would be an inadequate standard for determining excess profits, and the corporation would be entitled to file a claim for relief under section 722 for the year 1942 and subsequent years.

(b) The business of the taxpayer is of a class in which capital is not an important income-producing factor. An illustration might be a corporation commencing business in June, 1940, doing business as fashion consultants. Although the corporation operates with very little invested capital, it cannot qualify as a personal service corporation under section 725 because it employs a large technical and professional staff. The excess profits credit based upon low invested capital would be an inadequate standard for determining excess profits.

(c) The invested capital of the taxpayer is abnormally low. If the type of business done by the taxpayer is not one in which invested capital is small but the invested capital of the taxpayer is unusually low because of peculiar conditions existing in its case, the excess profits credit based on invested capital will be considered an inadequate standard for determining excess profits. Thus, suppose that a corporation commenced business in 1941 with a leased plant valued at $1,000,000, but with equity invested capital and borrowed capital of only $40,000. If the invested capital of such company is unusually low relative to the size of its operations, its excess profits credit based on invested capital might be an inadequate standard for determining excess profits, and the taxpayer would be subject to an unreasonable tax burden if required to compute its excess profits tax under the invested capital method.

The last sentence of section 722 (a) permits consideration to be given to the nature of the taxpayer and the character of its business under section 722 (c) existing after December 31, 1939, to the extent necessary to establish the normal earnings to be used as the constructive average base period net income. In the case of a taxpayer commencing business after December 31, 1939, it is necessary to examine the type of business engaged in, the relationship between its profits and invested capital, its profits and sales, and the profits and invested capital and profits and sales of comparable concerns, the earning capacity of the taxpayer, the character and experience of the management, the nature of the competition encountered, and all other factors pertinent in constructing normal earnings. The mere fact that earnings after December 31, 1939, exceed the amount of the excess profits credit based on invested capital is not of itself an indication that the taxpayer is of a class which shows a higher than average return upon capital or that its invested capital is abnormally low. Therefore any facts or conclusions derived with respect to the period after December 31, 1939, shall be related to the base period; or, if the base period does not represent a period of normal earnings for the type of business exemplified by the taxpayer, to another period of average normal earnings; and in either case the taxpayer must establish that it would satisfy the provisions and conditions of section 722 (c) and of this section for such period.

No exact criteria can be prescribed for the computation of the constructive average base period net income of a taxpayer described in this section. In some cases it may be the average of normal earnings reconstructed for the 48 months preceding the beginning of its first excess profits tax taxable year which would have begun in 1940 (but not after May 31, 1940); in others it might be determined without reconstructing the income for each year in a fictitious base period. In still other cases, if the taxpayer is a member of an industry which was depressed during the base period or which has a variant business cycle or sporadic and intermittent periods of property, the constructive average base period net income might be determined by reference to the average earnings of comparable businesses in the same industry computed for a period of normal average earnings or computed as the average earnings over the period of existence of the industry. If the taxpayer's business is a continuation of a preexisting business enterprise, regard might be had to the experience and earning capacity of such enterprise in order to ascertain normal earnings to be attributed to the taxpayer.

As in the case of taxpayers which are deemed to have commenced business or changed the character of the business

two years prior to the actual event, and of taxpayers which after December 31, 1939, have consummated a change in the capacity for production or operation as a result of a course of action to which the taxpayer was committed prior to January 1, 1940, it may not be possible to reconstruct demand, sales, and selling prices based upon such demand and sales upon the basis of actual economic conditions existing within the framework of the base period or other period established to be a period of normal earnings. In certain cases actual demand, sales, and selling prices might not represent reasonable limitations upon the earning level which the taxpayer would have attained had it been in existence during such period. Moreover, the fact that normal earnings are being reconstructed for such period for a business which was not then in existence implies the existence of conditions not necessarily present in the period for which reconstruction is being made. Consequently in proper cases, demand, sales, and selling prices may be established upon the basis of certain assumptions not inconsistent with the hypothesis that the taxpayer was in existence and attained its normal earning level during such period, and not inconsistent with the experience of similar taxpayers which have reached a level of normal earnings, or of an industry of which the taxpayer is a member, which might furnish an indication of economic factors which would have been encountered by the taxpayer in such period.

Since business normally requires a period of development after commencement before attainment of normal earning capacity, the full amount of normal earnings upon which would be based the constructive average base period net income may exceed the excess profits net income for an excess profits tax taxable year. No accurate computation of excess profits or of an unused excess profits credit for an excess profits tax taxable year can reasonably be made with respect to a taxpayer which has not reached full normal earning capacity in such year based upon a comparison of normal earnings representing full operating capacity with excess profits net income from operations for such year based upon but a portion of normal operating capacity. With respect to such an excess profits tax taxable year, prior to the year in which the taxpayer has reached its full earning capacity, the only fair and just standard of normal earnings to be used as the constructive average base period net income for such year shall be based upon normal earnings attributable to the level of operations which normally would have been reached by the taxpayer during such year. Such normal earnings may be determined in the same manner as in the case of a change in the capacity for production or operation consummated during a taxable year beginning after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940. (See § 30.722–3 (d).)

Amounts paid into a corporation which is organized and commences business after December 31, 1939, after the beginning of its first excess profits tax taxable year constitute capital additions under section 713 (g) or section 743. An amount equal to 8 percent of the net capital addition is included in computing the excess profits credit based on income under section 713 (a). Since the amount of normal earnings to be used as the constructive average base period net income must be based upon the nature and character of a taxpayer as it exists on a certain date, a portion of such normal earnings may duplicate a portion of the excess profits credit based upon the net capital addition. In order to obviate such duplication, no amount shall be included in the net capital addition which is included in determining the nature of the taxpayer and the character, kind, and size of its business upon the basis of which is determined the constructive average base period net income. Consequently, in any case in which the taxpayer has claimed relief under the provisions of section 722 (c), the beginning of the taxpayer's first excess profits tax taxable year for the purposes of computing that portion of the excess profits credit reflecting net capital additions or reductions under sections 713 (g) and 743, shall be considered to be that date after which capital additions and capital reductions are not taken into account in computing constructive average base period net income. For example, assume that a corporation reporting income on the basis of a calendar year commenced business on April 1, 1940, with $100,000 of property paid in for stock. By November 1, 1940, $200,000 additional had been paid in, and by the end of its taxable year, December 31, 1940, $10,000 additional had been paid in. It is assumed that the corporation is entitled to relief under section 722, and it is determined that a constructive average base period net income should be established with respect to the nature and character of the business of the taxpayer which existed on November 1, 1940. For the purposes of an adjustment to the excess profits credit on account of net capital additions or reductions based upon section 713 (g), November 1, 1940, rather than April 1, 1940, will be deemed to be the beginning of the taxpayer's first excess profits tax taxable year.

§ 30.722–5 *Application for relief under section 722*—(a) *Requirements for filing*—(1) *Excess profits tax taxable years beginning in 1940 or 1941.* To obtain the benefits of section 722 for any excess profits tax taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, the taxpayer shall, prior to September 16, 1943, file under oath an application on Form 991 (revised January, 1943) for such year, unless the provisions of (d) or (e) of this section are applicable to the taxpayer, or unless the taxpayer prior to May 8, 1943, the date of the approval of Treasury Decision 5264, has filed an application for relief on Form 991. A separate application shall be filed for each year. However, if relief is claimed for more than one of such years, and if the grounds for relief and the amount of the constructive average base period net income for use in computing the excess profits tax for each of such years are the same, only the first page and the pertinent lines of Schedule A, Form 991 (revised January, 1943), need be executed under oath for each such year after the first excess profits tax taxable year for which an application for relief has been filed: *Provided,* That the data and information filed with the application for such first year are incorporated by reference into the application for such later year.

If an application for relief on Form 991 (prior to its revision in January, 1943) for years beginning in 1940 or 1941 has been filed prior to May 8, 1943, the date of the approval of Treasury Decision 5264, such application shall be considered an application for relief under section 722 but the relief for which such application constitutes a claim shall be restricted to the specific grounds stated in the application. If new grounds in addition to those set forth in such application are relied upon by the taxpayer for relief under section 722 with respect to years beginning in 1940 or 1941, a supplemental application for relief, or an amendment to the application already filed for such years shall be filed under oath on Form 991 (revised January, 1943) prior to September 16, 1943.

In order to obtain the benefits of an unused excess profits credit computed by using the excess profits credit based on constructive average base period net income for a taxable year beginning in 1940 or 1941, as an unused excess profits credit carry-over, an application with respect to such year need not necessarily be filed prior to September 16, 1943. Such benefits may be obtained if the taxpayer files a timely application for relief with respect to the year to which such unused excess profits credit carry-over is desired to be applied, except as otherwise provided by (e) of this section. In order to obtain the benefits of an unused excess profits credit computed by using the excess profits credit based on constructive average base period net income for any taxable year as an unused excess profits credit carry-back, a timely application for relief must be filed with respect to the taxable year in which such unused excess profits credit arose, except as otherwise provided in (e) of this section. In addition a claim for refund or credit on Form 843 claiming the benefit of the carry-back shall be filed within the period of limitation provided in section 322 applicable to the year to which such carry-back is to be applied.

Except as otherwise provided in this section, the application for relief shall set forth in detail and under oath each ground under section 722 upon which the claim for relief is based, and facts sufficient to apprise the Commissioner of the exact basis thereof. The mere statement of the provision or provisions of law under section 722 upon which the claim for relief is based shall not constitute an application for relief within the meaning of section 722. If a claim for relief is based upon section 722 (b) (5) and § 30.722–3 (e) (relating to factors other than those expressly provided by section 722 (b) (1), (2), (3), and (4) and

§ 30.722–3 (a), (b), (c), and (d)), the application must state the factors which affect the business of the taxpayer, which may reasonably be considered as resulting in an inadequate standard of normal earnings during the base period, and the reasons why the extension of relief under section 722 to the taxpayer would not be inconsistent with the principles underlying the provisions of section 722 (b) (1), (2), (3), and (4) and § 30.722–3 (a), (b), (c), and (d), and with the conditions and limitations enumerated therein. If it is not possible for the taxpayer prior to September 16, 1943, to obtain, prepare, and present all the detailed information required to establish its eligibility for relief and the amount of its constructive average base period net income, such information may be submitted within a reasonable time after filing the application as a supplement to the application. No new grounds presented by the taxpayer after September 15, 1943, will be considered in determining eligibility for relief or the amount of the constructive average base period net income to be used in computing such relief for taxable years beginning in 1940 or 1941.

(2) *Taxable years beginning after December 31, 1941.* Except as provided in section 710 (a) (5) and § 30.710–5 (relating to deferment of payment of excess profits tax in certain cases under section 722) and except as provided in (e) of this section, the taxpayer is not permitted to claim the benefits of section 722 in computing its excess profits tax on its return, but must compute its tax, file its return, and pay its excess profits tax without the application of section 722. To obtain the benefits of section 722 for any taxable year beginning after December 31, 1941, a taxpayer not later than six months after the date prescribed by law for the filing of its excess profits tax return for such year must file under oath an application on Form 991 (revised January, 1943) for the benefits of section 722, unless the taxpayer has deferred on its return a portion of its excess profits tax under section 710 (a) (5), or unless the provisions of (d) and (e) of this section are applicable to the taxpayer. For the purposes of this section, the time prescribed by law for filing the return includes the period of any extension of time granted for such filing.

In order to obtain the benefits of an unused excess profits credit computed by using the excess profits credit based on constructive average base period net income for an excess profits tax taxable year beginning after December 31, 1941, as an unused excess profits credit carryover, the taxpayer must file an application on Form 991 (revised January, 1943) not later than six months after the date prescribed by law for the filing of the excess profits tax return for the year to which such unused excess profits credit carry-over is desired to be applied, except as otherwise provided in (e) of this section. In order to obtain the benefits of an unused excess profits credit computed by using the excess profits credit based on constructive average base period net income for any taxable year as an unused excess profits credit carryback, a timely application for relief must be filed with respect to the taxable year in which such unused excess profits credit arose except as otherwise provided in (e) of this section. In addition a claim for refund or credit on Form 843 claiming the benefit of the carryback shall be filed within the period of limitation provided in section 322 applicable to the year to which such carryback is to be applied.

Except as otherwise provided in this section, the application on Form 991 (revised January, 1943) must be set forth in detail and under oath each ground under section 722 upon which the claim for relief is based, and facts sufficient to apprise the Commissioner of the exact basis thereof. The mere statement of the provision or provisions of law under section 722 upon which the claim for relief is based shall not constitute an application for relief within the meaning of section 722. If a claim for relief is based upon section 722 (b) (5) and § 30.722–3 (e) (relating to factors other than those expressly provided by section 722 (b) (1), (2), (3), and (4) and § 30.722–3 (a), (b), (c), and (d)), the application must state the factors which affect the business of the taxpayer, which may reasonably be considered as resulting in an inadequate standard of normal earnings during the base period, and the reasons why the extension of relief under section 722 to the taxpayer would not be inconsistent with the principles underlying the provisions of section 722 (b) (1), (2), (3), and (4), and § 30.722–3 (a), (b), (c), and (d), and with the conditions and limitations enumerated therein. If it is not possible for the taxpayer within six months from the date prescribed by law for filing its excess profits tax return to obtain, prepare, and present all the detailed information required to establish its eligibility for relief and the amount of its constructive average base period net income, such information may be submitted within a reasonable time after filing the application as a supplement to the application. No new grounds presented by the taxpayer after the date prescribed by law for filing its application will be considered in determining eligibility for relief or the amount of the constructive average base period net income to be used in computing such relief for a taxable year.

If an application for relief has been filed for any prior excess profits tax taxable year, whether under section 722 prior to its amendment by the Revenue Act of 1942 or after such amendment, and if a constructive average base period net income has not been finally determined which may be used by the taxpayer in computing its excess profits tax for the current year, the supporting data and information submitted with such earlier application need not be repeated in Form 991 (revised January, 1943) filed for the current year provided reference is made to such earlier application as constituting part of Form 991 (revised January, 1943) filed for the current year.

In any case in which the taxpayer claims on its excess profits tax return, in accordance with section 710 (a) (5) and § 30.710–5, the benefit of a tax deferment under section 710 (a) (5), it must attach duplicate copies of its completed application for relief under section 722 on Form 991 (revised January, 1943) to its excess profits tax return on Form 1121. If a taxpayer files an excess profits tax return on which is deducted a tax deferment claimed under section 710 (a) (5) without attaching a completed Form 991 (revised January, 1943) thereto, the taxpayer will not be deemed to have claimed on its return in accordance with section 710 (a) (5) and § 30.710–5 the benefits of section 722. (See § 30.710–5.) In such case, the amount of tax shown on the return shall be the amount shown by the taxpayer, increased by the amount of tax deferment improperly claimed. In order to obtain the benefits of section 722 with respect to the tax shown on the return, the taxpayer must file an application for relief under section 722 on Form 991 (revised January, 1943) not later than six months after the date prescribed by law for the filing of the return.

(b) *Method of filing and information required.* The application on Form 991 (revised January, 1943) shall be filed in duplicate with the Commissioner of Internal Revenue, Washington, D. C., attention of the Income Tax Unit, Clearing Division, Claims Control Section, except in those cases in which the taxpayer claims on its excess profits tax return the benefit of a tax deferment pursuant to section 710 (a) (5). In such latter event, the application shall be executed in duplicate and attached to the taxpayer's excess profits tax return on Form 1121 for the taxable year for which such deferment is claimed. Such application shall, in accordance with the provisions of this section, and the instructions on Form 991 (revised January 1943) set forth the following information:

(1) The name and address of the corporation;

(2) The date and place of incorporation;

(3) The excess profits tax taxable year for which the benefits of section 722 are claimed;

(4) The collection district in which the excess profits tax return for such year was filed;

(5) The date on which the excess profits tax return for the year was filed and the period of extension, if any, granted for the filing of such return;

(6) The excess profits tax shown upon the excess profits tax return for the year (computed prior to the deferment under section 710 (a) (5), to the foreign tax credit under section 729, to the credit for debt retirement under section 783, and to the adjustment under section 734);

(7) The excess profits tax computed after the application of section 722 (computed as prescribed in line 6);

(8) The reduction in tax resulting from the application of section 722;

(9) The adjusted excess profits net income computed without regard to section 722;

(10) The normal tax net income computed without regard to the credit pro-

vided in section 26 (e) relating to income subject to excess profits tax;

(11) The percentage of which line 9 is of line 10;

(12) The amount of tax deferred under section 710 (a) (5);

(13) The total net relief claimed with respect to the excess profits tax shown on the return;

(14) The total excess profits tax for the taxable year paid at or prior to the time the application is filed;

(15) The amount of refund or credit for which the application is a claim;

(16) If the application is filed as a result of a deficiency:

(i) The excess profits tax shown in the preliminary notice or notice of deficiency,

(ii) The excess profits tax after application of section 722, and

(iii) The reduction in tax under section 722;

(17) The prior taxable year or years for which an application for a constructive average base period net income has been made;

(18) Whether a constructive average base period net income has been finally determined and used in connection with a prior taxable year, and if so:

(i) The amount determined for use in computing excess profits tax for a prior year,

(ii) The year for which such amount was used,

(iii) The date of determination,

(iv) By whom the determination was made,

(v) The reason for a claim for a constructive average base period net income for use in the taxable year if different from the amount used in a prior year,

(vi) Whether the membership of an affiliated group filing consolidated excess profits tax returns has changed from the year in which a constructive average base period net income was finally determined for such group;

(19) The excess profits net income or deficit in excess profits net income for each taxable year in the base period computed without regard to section 722;

(20) The average base period net income determined without regard to section 722, together with information and computations showing whether there is claimed:

(i) The benefit of section 713 (e) (relating to exclusion of deficit or to increase in lowest year in base period), or

(ii) The benefit of section 713 (f) (relating to increased earnings in last half of base period);

(21) The amount and the computation of the constructive average base period net income claimed for use in computing excess profits tax for the taxable year;

(22) Whether Supplement A has been availed of in determining average base period net income, and whether a separate constructive average base period net income has been finally determined for any component prior to the time the application is made;

(23) If the business was commenced during the base period or after December 31, 1939, whether such business is a continuation in whole or in part of a previously existing business, and if so, a statement of particulars;

(24) If the taxpayer is a member of an affiliated group making a consolidated excess profits tax return, and if such group is making application for relief under section 722:

(i) The first taxable year for which a consolidated excess profits tax return was made,

(ii) Whether a constructive average base period net income has been finally determined for any member of the group, and

(iii) Names and addresses of each member of the group, and all pertinent information necessary to determine constructive average base period net income of such group;

(25) If the taxpayer came into existence after December 31, 1939, the date after which capital additions and capital reductions were not taken into account in computing constructive average base period net income;

(26) If the benefits of section 711 (a) (1) (D or 711 (a) (2) (K) (relating to nontaxable income of certain industries with depletable resources) are claimed, a schedule showing the computation of, and the fair and just amount of:

(i) Normal output during the base period, as defined in section 735 (a) (5),

(ii) Normal unit profit as defined in section 735 (a) (9);

(27) If normal production output or operation, was interrupted during the base period because of unusual and peculiar events (section 722 (b) (1)):

(i) A description of the events and time of occurrence, and

(ii) The taxable years in the base period during which production output or operations were affected;

(28) If the business of the taxpayer was depressed during the base period, or the taxpayer was a member of an industry which was depressed during the base period because of temporary and unusual economic events (section 722 (b) (2)):

(i) A description of the temporary economic events unusual in the case of the taxpayer or an industry of which it was a member, and

(ii) If claim of depression is based on membership in a depressed industry, description of industry, and names and addresses of other members of such industry;

(29) If the business of the taxpayer was depressed in the base period because of membership in an industry affected by conditions subjecting the taxpayer to either a profits cycle differing materially from the general business cycle (section 722 (b) (3) (A)), or sporadic and intermittent periods of profits inadequately represented in the base period (section 722 (b) (3) (B)):

(i) A description of the character of the industry, and names and addresses of other members of the industry,

(ii) Data establishing that the taxpayer was depressed by reason of an unusual profits cycle, or

(iii) Data establishing that the taxpayer was depressed by reason of realization of sporadic profits inadequately represented in the base period;

(30) If the business of the taxpayer was commenced, or if there was a change in the character of the business, immediately prior to or during the base period (section 722 (b) (4)):

(i) The date upon which the commencement of business or the change in the character of the business occurred,

(ii) If a change in the character of the business has occurred:

(*a*) The nature of the change,

(*b*) The portion of the definition in section 722 (b) (4) within which such change is claimed to fall, and

(*c*) Evidence supporting the contention that the average base period net income does not reflect normal operations for the entire base period,

(iii) If the business did not reach by the end of the base period the earning level it would have reached if the business had been commenced, or if the change in the character of the business had occurred two years prior to the time the commencement or change occurred, a statement of particulars,

(iv) If a change in capacity for production or operation of the business was consummated during the taxable year beginning after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940:

(*a*) The date upon which such change was consummated, and the extent to which income for such year reflects such change,

(*b*) Evidence of commitment to a course of action prior to January 1, 1940,

(*c*) A schedule showing net capital addition or net capital reduction (section 713 (g) (1) or (2)), and the amount of money or property expended after beginning of the first excess profits tax taxable year under the Internal Revenue Code in changing the capacity for production or operation of the business;

(31) If other factors produce an average base period net income which is an inadequate standard of normal earnings, and if the application of section 722 is not inconsistent with the principles and limitations of section 722 (b) (section 722 (b) (5)):

(i) A description of other factors claimed to affect business during the base period and to result in an average base period net income which is an inadequate standard of normal earning;

(32) If the business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income (section 722 (c) (1)):

(i) Description of character of intangible assets, and

(ii) Names and addresses of other corporations believed to be in the same class of business where intangible assets of a similar character make important contributions to income;

(33) If the business of the taxpayer is of a class in which capital is not an important income-producing factor (section 722 (c) (2)):

(i) A description of the nature of the business and an explanation of why capital is not an important income-producing factor, and

(ii) Names and addresses of other corporations believed to be in the same class of business in which capital is not an important income-producing factor;

(34) If the invested capital of the taxpayer is abnormally low (section 722 (c) (3)):

(i) A description of the circumstances causing invested capital to be abnormally low;

(35) Such other information as may be required by the instructions appearing on Form 991 (revised January, 1943) or issued therewith.

(c) *Claim for refund.* The application on Form 991 or Form 991 (revised January, 1943) shall be considered a claim for refund or credit with respect to the excess profits tax for the taxable year for which the application is filed which has been paid at or prior to the time such application is filed. The amount of credit or refund claimed shall be the excess of the amount of excess profits tax for the taxable year paid over the amount of excess profits tax claimed to be payable computed pursuant to the provisions of section 722. In case the taxpayer elects to pay in installments the tax shown upon its return and at the time the application is filed such tax has not been paid in full, the taxpayer should file a claim for refund on Form 843 as promptly as possible after such tax has been paid in full. The information already submitted in the application need not again be submitted on Form 843 if reference is made therein to such application. For limitations upon refunds and credits generally, see section 322. As to procedure upon disallowance of a claim for refund of an excess profits tax which is claimed to be excessive and discriminatory under section 722, see section 732.

(d) *After assertion of deficiency.* If a taxpayer does not file prior to September 16, 1943, with respect to an excess profits tax taxable year beginning in 1940 or 1941 or within the six-month period provided in section 722 (d) with respect to an excess profits tax taxable year beginning after December 31, 1941, an application under (a) and (b) of this section, it may nevertheless obtain relief under section 722 for such year if there is a deficiency in excess profits tax asserted against it for such year. In such case, the operation of section 722 shall not reduce the excess profits tax for such year determined without reference to such section by an amount in excess of the amount of the deficiency finally determined without reference to such section.

If a preliminary notice of deficiency is issued, the taxpayer may obtain the limited benefits of section 722 described in the preceding paragraph by filing an application on Form 991 (revised January, 1943) within ninety days after the date of such notice, regardless of when or whether a formal notice of deficiency is issued. (See section 272 (a).) If a formal notice of deficiency is issued without the issuance of a preliminary notice or within ninety days after the issuance of a preliminary notice, the taxpayer may claim such benefits in its petition, or amended petition, to The Tax Court of the United States filed in accordance with the rules of The Tax Court and with respect to the deficiency asserted in such formal notice. If, however, a preliminary notice is issued and the taxpayer does not file a timely application on Form 991 (revised January, 1943), and a formal notice of deficiency is issued after the expiration of ninety days from the date of the preliminary notice, the taxpayer cannot claim the benefits of section 722 in a petition, or amended petition, filed with The Tax Court of the United States.

A taxpayer filing an application on Form 991 (revised January 1943) after a preliminary notice of deficiency shall attach to such application a copy of such notice.

(e) *Waiver of limitations for subsequent taxable years.* If constructive average base period net income is finally determined under section 722 (a) with respect to a taxpayer, or if permission is granted by the Commissioner after a determination which has not become final, and if, in the opinion of the Commissioner, no substantial evidence exists which requires a redetermination of such constructive average base period net income for use in any subsequent taxable year, such taxpayer may without the filing of any application on Form 991 (revised January, 1943) use the constructive average base period net income so determined, except as further adjustments may be required by section 711 (b), in computing its excess profits credit based on income and its excess profits tax in any return required to be filed thereafter. If a taxpayer which pursuant to the preceding sentence, would otherwise be entitled to use a constructive average base period net income previously determined, is acquired by another corporation in a transaction which under Supplement A constitutes it a component corporation and the transferee an acquiring corporation, or if such taxpayer becomes a member of an affiliated group which makes a consolidated excess profits tax return, the average base period net income of the acquiring corporation, or the consolidated average base period net income of the affiliated group, as the case may be, may not as of right include such constructive average base period net income. To obtain the benefits of section 722, such acquiring corporation or affiliated group of corporations must file an application on Form 991 (revised January, 1943) and establish eligibility for relief and the fair and just amount representing normal earnings to be used as the constructive average base period net income.

Eligibility for relief and a constructive average base period net income finally determined on behalf of a taxpayer with respect to an excess profits tax taxable year may have to be reestablished with respect to a subsequent taxable year if:

(1) The taxpayer, after the year with respect to which such determination was made, acquires a component corporation in a transaction constituting it an acquiring corporation under Supplement A,

(2) The membership of the taxpayer which is an affiliated group of corporations making consolidated excess profits tax returns has changed subsequent to the year with respect to which the determination was made,

(3) The taxpayer which is an affiliated group of corporations makes its first consolidated excess profits tax return subsequent to the year with respect to which such determination was made on behalf of one or more members of the group,

(4) The taxpayer is deemed to have commenced business or changed the character of its business two years prior to the actual event, and as of the close of its base period could not reasonably expect to realize its full earning capacity in the year with respect to which the determination was made,

(5) The taxpayer has effected a change in capacity for production or operation after December 31, 1939, as a result of a course of action to which it was committed prior to January 1, 1940, and the full effect of such change was not reflected in the operations of the business in the year with respect to which the determination was made,

(6) The taxpayer commenced business after December 31, 1939, and the business had not reached its full earning capacity in the year with respect to which the determination was made.

PAR. 3. There is inserted immediately preceding § 30.732–1, added by Treasury Decision 5045, approved May 3, 1941, the following:

SEC. 222. RELIEF PROVISIONS. (Revenue Act of 1942, Title II.)

* * * * *

(c) *Review of abnormalities by a division of the Board.* Section 732 (relating to review of abnormalities by the Board) is amended by inserting at the end thereof the following new subsection:

(d) *Review by special division of Board.* The determinations and redeterminations by any division of the Board involving any question arising under section 721 (a) (2) (C) or section 722 shall be reviewed by a special division of the Board which shall be constituted by the Chairman and consist of not less than three members of the Board. The decisions of such special division shall not be reviewable by the Board, and shall be deemed decisions of the Board.

* * * * *

SEC. 201. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1942, Title II.)

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.

SEC. 504. CHANGE OF NAME OF BOARD OF TAX APPEALS. (Revenue Act of 1942, Title V.)

* * * * *

(c) *References.* All references in any statute (except this section), or in any rule, regulation, or order, to the "Board of Tax Appeals" or to the "Board" when used in the sense of "Board of Tax Appeals", or to the "member", "members", or "chairman" thereof shall be considered to be made to The Tax Court of the United States, the judge, judges, and presiding judge thereof, respectively.

PAR. 4. Section 30.732–1 is amended as follows:

A. By changing the heading and the first paragraph to read as follows:

§ 30.732–1 *Review of abnormalities by The Tax Court of the United States.* Section 732 provides that, in addition

to its jurisdiction to redetermine a deficiency, The Tax Court of the United States shall have jurisdiction to review the Commissioner's disallowance of a claim for refund of excess profits taxes, if such disallowance involves the determination of any question relating solely to the application of section 711 (b) (1) (H), (I), (J), or (K), relating to abnormal deductions during the base period, section 721, relating to abnormalities in income in the taxable period, or section 722, relating to general relief from excessive and discriminatory excess profits taxes. The taxpayer's petition must be filed with The Tax Court within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the sending by registered mail of the notice of disallowance of the claim for refund.

B. By striking the words "the Board" wherever they appear in the second paragraph and by inserting in lieu thereof "The Tax Court".

C. By amending the third paragraph including the example to read as follows:

The extent and the finality of The Tax Court's jurisdiction with respect to questions involving the sections dealing with abnormalities and general excess profits tax relief are set forth in section 732 (c) and (d). If the ascertainment of the excess profits tax liability for a taxable year is dependent in whole or in part upon the determination of any question which is necessary solely by reason of section 711 (b) (1) (H), (I), (J), or (K), section 721, or section 722, the determination of such question shall not be reviewed or redetermined by any court or agency except The Tax Court. If the determinations and redeterminations by any division of The Tax Court involve any question arising under section 721 (a) (2) (C) or section 722, such determinations and redeterminations shall be reviewed by a special division of The Tax Court which shall be constituted by the Presiding Judge and shall consist of not less than three judges of The Tax Court. The decisions of such special division shall not be reviewable by The Tax Court, or by any court or agency, and shall be deemed decisions of The Tax Court. The application of section 732 (c) and (d) may be shown by the following example:

Example. A taxpayer, which is a domestic manufacturing corporation, has filed a claim for refund for a taxable year beginning in 1941, and as a result of the Commissioner's action with respect to such claim, makes the following contentions: first, that it is entitled to a constructive average base period net income of $1,300,000 pursuant to an application filed on Form 991 for relief under section 722 instead of a constructive average base period net income of $900,000 determined by the Commissioner; second, that $100,000 of income from a judgment based upon a claim for patent infringement is net abnormal income attributable under section 721 to prior years whereas the Commissioner has attributed only $60,000 to such years; and third, that the amount of gross income determined by the Commissioner is too large. Since the taxpayer's first contention is predicated upon an issue arising under section 722, the Commissioner's determination is reviewable only by The Tax Court, and any determination or redetermination made by any division of The Tax Court must be reviewed by the special division constituted by the Presiding Judge; the decision of such special division is the decision of The Tax Court and can not be reviewed by The Tax Court or any court or agency. The taxpayer's second contention is based upon an issue arising under section 721; therefore the Commissioner's determination is reviewable only by The Tax Court. Since the issue arises under section 721 (a) (2) (A), and not section 721 (a) (2) (C), no further review is required by the special division, and the decision of The Tax Court is final and can not be reviewed by any court or agency. The taxpayer's third contention does not arise under either section 711 (b) (1) (H), (I), (J), or (K), section 721, or section 722, but independently of such sections. Consequently review of this issue is not confined to The Tax Court.

(Sec. 62 of the Internal Revenue Code (53 Stat. 32; 26 U.S.C. 62) as made applicable by section 729 (a) of the Internal Revenue Code (54 Stat. 789; 26 U.S.C., 729 (a)) and section 222 (a), (c), and (e) (1) of the Revenue Act of 1942 (Public Law 753, 77th Congress).)

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved: May 8, 1943.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

[F. R. Doc. 43-7345; Filed, May 10, 1943; 11:49 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division

PART 605—MINIMUM WAGE RATE IN THE WOMEN'S APPAREL INDUSTRY

PROHIBITION OF INDUSTRIAL HOME WORK

In the matter of the prohibition of industrial home work in the Women's Apparel Industry—amendments to Title 29, Chapter V, Code of Federal Regulations, Part 605 and § 605.100.

Whereas the Administrator of the Wage and Hour Division of the United States Department of Labor by Part 605, Chapter V. Title 29, Code of Federal Regulations, issued a wage order for the Women's Apparel Industry establishing for such industry a minimum wage rate of 40 cents an hour effective September 29, 1941, and prescribing certain terms and conditions applicable to industrial home work employment, effective December 1, 1942; and

Whereas the Administrator by § 605.100–112, Title 29, Chapter V, Code of Federal Regulations, issued regulations applicable to industrial home work employment in the Women's Apparel Industry, pursuant to sections 8 (f) and 11 (c) of the Fair Labor Standards Act of 1938, effective December 1, 1942; and

Whereas on April 3, 1943, the Administrator issued a Notice of Opportunity To Show Cause on or before April 24, 1943, why § 605.7 of the wage order for, and § 605.103 of the regulations applicable to the employment of home workers in, the Women's Apparel Industry should not be amended to provide that the requirement of previous industrial home work employment shall not be applied in considering an application for a home work certificate, where this requirement shall result in unusual hardship to the industrial home worker; and

Whereas after due consideration of the objections filed to the proposed amendments, I find that it is advisable to adopt these amendments and that the limited exception contained therein is consistent with the purposes of § 605.7 of the wage order;

Now, therefore, It is ordered, That §§ 605.7 and 605.103 of Part 605 of Chapter V, Title 29, Code of Federal Regulations, are hereby amended to read as follows:

§ 605.7 *Restriction of home work.* No work in the Women's Apparel Industry, as defined in §§ 605.4 and 605.5, Part 605, Chapter V, Title 29, Code of Federal Regulations, shall be done in or about a home, apartment, tenement, or room in a residential establishment after November 30, 1942, except by such persons as have obtained special home work certificates issued pursuant to applicable regulations of the Wage and Hour Division, authorizing industrial home work by a worker who:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to the date specified in the regulations (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations.

§ 605.103 *Terms and conditions for the issuance of certificates.* If the application is in proper form and sets forth facts showing that the worker:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to the date specified in the regulations (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations,

a certificate may be issued authorizing the applicant employer to employ the worker in industrial home work in the Women's Apparel Industry.

No home worker shall perform industrial home work for more than one employer in the Women's Apparel Industry, but home work employment in another industry shall not be a bar to the issu-

ance of a certificate for the Women's Apparel Industry.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

Signed at New York, N. Y., this 5th day of May 1943.

L. METCALFE WALLING,
Administrator.

[F. R. Doc. 43-7308; Filed, May 10, 1943; 11:03 a. m.]

PART 607—MINIMUM WAGE RATE AND REGULATIONS APPLICABLE TO THE EMPLOYMENT OF HOME WORKERS IN THE JEWELRY MANUFACTURING INDUSTRY

PROHIBITION OF INDUSTRIAL HOME WORK

In the matter of the prohibition of industrial home work in the Jewelry Manufacturing Industry—Amendments to Title 29, Chapter V, Code of Federal Regulations, Part 607 and § 607.100.

Whereas, the Administrator of the Wage and Hour Division of the United States Department of Labor by Part 607, Chapter V, Title 29, Code of Federal Regulations, issued a wage order for the Jewelry Manufacturing Industry establishing for such industry a minimum wage rate of 40 cents an hour effective November 3, 1941, and prescribing certain terms and conditions applicable to industrial home work employment; and

Whereas, the Administrator by § 607.-100–112, Title 29, Chapter V, Code of Federal Regulations, issued regulations applicable to industrial home work employment in the Jewelry Manufacturing Industry, pursuant to sections 8 (f) and 11 (c) of the Fair Labor Standards Act of 1938, effective November 3, 1941; and

Whereas on December 23, 1942, the Administrator issued a Notice of Opportunity To Show Cause on or before January 21, 1943, why § 607.3 of the wage order for, and § 607.103 of the regulations applicable to the employment of home workers in, the Jewelry Manufacturing Industry should not be amended to allow the issuance of industrial home work certificates to any worker who is under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop in accordance with the above-mentioned wage order and regulations, notwithstanding that such worker was not employed in industrial home work in the Jewelry Manufacturing Industry prior to July 1, 1941, as required by §§ 607.3 and 607.103 (1) thereof, respectively; and

Whereas no objections to the proposed amendments have been received by the Administrator; and

Whereas on April 3, 1943, the Administrator issued a Notice of Opportunity To Show Cause on or before April 24, 1943, why § 607.3 of the wage order for, and § 607.103 of the regulations applicable to the employment of home workers in, the Jewelry Manufacturing Industry should not be amended to provide that the requirement of previous industrial home work employment shall not be applied, in considering an application for a home work certificate, where this requirement shall result in unusual hardship to the individual home worker; and

Whereas after due consideration of the objections filed to the amendments proposed in the notice of April 3, 1943, I find that it is advisable to adopt these amendments and that the limited exception contained therein is consistent with the purposes of § 607.3 of the wage order,

Now, therefore, It is ordered, That § 607.3 and §607.103 of Part 607 of Chapter V, Title 29, Code of Federal Regulations, are hereby amended to read as follows:

§ 607.3 *Restriction of home work.* No work in the Jewelry Manufacturing Industry, as defined in § 607.5 and § 607.6, Part 607, Chapter V, Title 29, Code of Federal Regulations, shall be done in or about a home, apartment, tenement, or room in a residential establishment except by such persons as have obtained special home work certificates issued pursuant to applicable regulations of the Wage and Hour Division, authorizing industrial home work by a worker who:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to July 1, 1941 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations.

§ 607.103 *Terms and conditions for the issuance of certificates.* If the application is in proper form and sets forth facts showing that the worker:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to July 1, 1941 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations,

a certificate may be issued authorizing the applicant employer to employ the worker in industrial home work in the Jewelry Manufacturing Industry.

No home worker shall perform industrial home work for more than one employer in the Jewelry Manufacturing Industry, but home work employment in another industry shall not be a bar to the issuance of a certificate for the Jewelry Manufacturing Industry.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

Signed at New York, N. Y., this 5th day of May 1943.

L. METCALFE WALLING,
Administrator.

[F. R. Doc. 43-7309; Filed, May 10, 1943; 11:03 a. m.]

PART 617—MINIMUM WAGE RATE AND REGULATIONS APPLICABLE TO THE EMPLOYMENT OF HOME WORKERS IN THE KNITTED OUTERWEAR INDUSTRY

PROHIBITION OF INDUSTRIAL HOME WORK

In the matter of the prohibition of industrial home work in the Knitted Outerwear Industry—Amendments to Title 29, Chapter V, Code of Federal Regulations, Part 617 and § 617.100.

Whereas the Administrator of the Wage and Hour Division of the United States Department of Labor by Part 617, Chapter V, Title 29, Code of Federal Regulations, issued a wage order for the Knitted Outerwear Industry establishing for such industry a minimum wage rate of 40 cents an hour effective April 20, 1942, and prescribing certain terms and conditions applicable to industrial home work employment; and

Whereas the Administrator by § 617.-100–112, Title 29, Chapter V, Code of Federal Regulations, issued regulations applicable to industrial home work employment in the Knitted Outerwear Industry, pursuant to sections 8 (f) and 11 (c) of the Fair Labor Standards Act of 1938, effective December 1, 1942; and

Whereas on April 3, 1943, the Administrator issued a Notice of Opportunity To Show Cause on or before April 24, 1943, why § 617.3 of the wage order for, and § 617.103 of the regulations applicable to the employment of home workers in, the Knitted Outerwear Industry should not be amended to provide that the requirement of previous industrial home work employment shall not be applied, in considering an application for a home work certificate, where this requirement shall result in unusual hardship to the individual home worker; and

Whereas after due consideration of the objections filed to the proposed amendments, I find that it is advisable to adopt these amendments and that the limited exception contained therein is consistent with the purposes of § 617.3 of the wage order,

Now, therefore, It is ordered, That §§ 617.3 and 617.103 of Part 617 of Chapter V, Title 29, Code of Federal Regulations, are hereby amended to read as follows:

§ 617.3 *Restriction of home work.* No work in the Knitted Outerwear Industry, as defined in § 617.5 and § 617.6, Part 617, Chapter V, Title 29, Code of Federal Regulations, shall be done in or about a home, apartment, tenement, or room in a residential establishment after November 30, 1942, except by such persons as have obtained special home work certificates issued pursuant to applicable regulations of the Wage and Hour Di-

vision, authorizing industrial home work by a worker who:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to August 20, 1941 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations.

§ 617.103 *Terms and conditions for the issuance of certificates.* If the application is in proper form and sets forth facts showing that the worker:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to August 20, 1941 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations

a certificate may be issued authorizing the applicant employer to employ the worker in industrial home work in the Knitted Outerwear Industry.

No home worker shall perform industrial home work for more than one employer in the Knitted Outerwear Industry, but home work employment in another industry shall not be a bar to the issuance of a certificate for the Knitted Outerwear Industry.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

Signed at New York, N. Y., this 5th day of May 1943.

L. METCALFE WALLING,
Administrator.

[F. R. Doc. 43-7310; Filed, May 10, 1943; 11:04 a. m.]

PART 621—MINIMUM WAGE RATE IN THE GLOVES AND MITTENS INDUSTRY

PROHIBITION OF INDUSTRIAL HOME WORK

In the matter of the prohibition of industrial home work in the Gloves and Mittens Industry—amendments to Title 29, Chapter V, Code of Federal Regulations, Part 621 and § 621.100.

Whereas the Administrator of the Wage and Hour Division of the United States Department of Labor by Part 621, Chapter V, Title 29, Code of Federal Regulations, issued a wage order for the Gloves and Mittens Industry establishing for such industry a minimum wage rate of 40 cents an hour effective September 21, 1942, and prescribing certain terms and conditions applicable to industrial home work employment; and

Whereas the Administrator by § 621.100–113, Title 29, Chapter V, Code of Federal Regulations, issued regulations applicable to industrial home work employment in the Gloves and Mittens Industry, pursuant to sections 8 (f) and 11 (c) of the Fair Labor Standards Act of 1938, effective September 21, 1942; and

Whereas on April 3, 1943, the Administrator issued a Notice of Opportunity To Show Cause on or before April 24, 1943, why § 621.3 of the wage order for, and § 621.103 of the regulations applicable to the employment of home workers in, the Gloves and Mittens Industry should not be amended to provide that the requirement of previous industrial home work employment shall not be applied, in considering an application for a home work certificate, where this requirement shall result in unusual hardship to the individual home worker; and

Whereas after due consideration of the objections filed to the proposed amendments, I find that it is advisable to adopt these amendments and that the limited exception contained therein is consistent with the purposes of § 621.3 of the wage order,

Now, therefore, It is ordered, That §§ 621.3 and 621.103 of Part 621 of Chapter V, Title 29, Code of Federal Regulations, are hereby amended to read as follows:

§ 621.3 *Restriction of home work.* No work in the Gloves and Mittens Industry, as defined in §§ 621.5 and 621.6, Part 621, Chapter V, Title 29, Code of Federal Regulations, shall be done in or about a home, apartment, tenement, or room in a residential establishment after September 21, 1942, except by such persons as have obtained special home work certificates issued pursuant to applicable regulations of the Wage and Hour Division, authorizing industrial home work by a worker who:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to April 1, 1941 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations.

§ 621.103 *Terms and conditions for the issuance of certificates.* If the application is in proper form and sets forth facts showing that the worker:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to April 1, 1941 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations,

a certificate may be issued authorizing the applicant employer to employ the worker in industrial home work in the Gloves and Mittens Industry.

No home worker shall perform industrial home work for more than one employer in the Gloves and Mittens Industry, but home work employment in another industry shall not be a bar to the issuance of a certificate for the Gloves and Mittens Industry.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

Signed at New York, New York this 5th day of May 1943.

L. METCALFE WALLING,
Administrator.

[F. R. Doc. 43-7311; Filed, May 10, 1943; 11:03 a. m.]

PART 625—MINIMUM WAGE RATE AND REGULATIONS APPLICABLE TO THE EMPLOYMENT OF HOME WORKERS IN THE BUTTON AND BUCKLE MANUFACTURING INDUSTRY

PROHIBITION OF INDUSTRIAL HOME WORK

In the matter of the prohibition of industrial home work in the Button and Buckle Manufacturing Industry—amendments to Title 29, Chapter V, Code of Federal Regulations, Part 625 and § 625.100.

Whereas the Administrator of the Wage and Hour Division of the United States Department of Labor, by Part 625, Chapter V, Title 29, Code of Federal Regulations, issued a wage order for the Button and Buckle Manufacturing Industry establishing for such industry a minimum wage rate of 40 cents an hour effective October 19, 1942, and prescribing certain terms and conditions applicable to industrial home work employment; and

Whereas the Administrator by § 625.100–112, Title 29, Chapter V, Code of Federal Regulations, issued regulations applicable to industrial home work employment in the Button and Buckle Manufacturing Industry, pursuant to sections 8 (f) and 11 (c) of the Fair Labor Standards Act of 1938, effective December 1, 1942; and

Whereas on April 3, 1943, the Administrator issued a Notice of Opportunity To Show Cause on or before April 24, 1943, why § 625.3 of the wage order for, and § 625.103 of the regulations applicable to the employment of home workers in, the Button and Buckle Manufacturing Industry should not be amended to provide that the requirement of previ-

ous industrial home work employment shall not be applied, in considering an application for a home work certificate, where this requirement shall result in unusual hardship to the individual home worker; and

Whereas after due consideration of the objections filed to the proposed amendments, I find that it is advisable to adopt these amendments and that the limited exception contained therein is consistent with the purposes of § 625.3 of the wage order,

Now, therefore, It is ordered, That §§ 625.3 and 625.103 of Part 625 of Chapter V, Title 29, Code of Federal Regulations, are hereby amended to read as follows:

§ 625.3 *Restriction of home work.* No work in the Button and Buckle Manufacturing Industry, as defined in §§ 625.5 and 625.6, Part 625, Chapter V, Title 29, Code of Federal Regulations, shall be done in or about a home, apartment, tenement, or room in a residential establishment after November 30, 1942, except by such persons as have obtained special home work certificates issued pursuant to applicable regulations of the Wage and Hour Division, authorizing industrial home work by a worker who:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to April 4, 1942 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations.

§ 625.103 *Terms and conditions for the issuance of certificates.* If the application is in proper form and sets forth facts showing that the worker:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to April 4, 1942 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations

a certificate may be issued authorizing the applicant employer to employ the worker in industrial home work in the Button and Buckle Manufacturing Industry.

No home worker shall perform industrial home work for more than one employer in the Button and Buckle Manufacturing Industry, but home work employment in another industry shall not be a bar to the issuance of a certificate for the Button and Buckle Manufacturing Industry.

These amendments shall become effective upon publication in the Federal Register.

Signed at New York, N. Y., this 5th day of May 1943.

L. METCALFE WALLING,
Administrator.

[F. R. Doc. 43-7312; Filed, May 10, 1943; 11:03 a. m.]

PART 628—MINIMUM WAGE RATE IN THE HANDKERCHIEF MANUFACTURING INDUSTRY

PROHIBITION OF INDUSTRIAL HOME WORK

In the matter of the prohibition of industrial home work in the Handkerchief Manufacturing Industry—Amendments to Title 29, Chapter V, Code of Federal Regulations, Part 628 and § 628.100.

Whereas the Administrator of the Wage and Hour Division of the United States Department of Labor by Part 628, Chapter V, Title 29, Code of Federal Regulations, issued a wage order for the Handkerchief Manufacturing Industry establishing for such industry a minimum wage rate of 40 cents an hour effective February 15, 1943, and prescribing certain terms and conditions applicable to industrial home work employment; and

Whereas the Administrator by § 628.-100-112, Title 29, Chapter V, Code of Federal Regulations, issued regulations applicable to industrial home work employment in the Handkerchief Manufacturing Industry, pursuant to sections 8 (f) and 11 (c) of the Fair Labor Standards Act of 1938, effective April 26, 1943; and

Whereas on April 3, 1943, the Administrator issued a Notice of Opportunity To Show Cause on or before April 24, 1943, why § 628.3 of the wage order for, and § 628.103 of the regulations applicable to the employment of home workers in, the Handkerchief Manufacturing Industry should not be amended to provide that the requirement of previous industrial home work employment shall not be applied, in considering an application for home work certificate, where this requirement shall result in unusual hardship to the individual home worker; and

Whereas after due consideration of the objections filed to the proposed amendments, I find that it is advisable to adopt these amendments and that the limited exception contained therein is consistent with the purposes of § 628.3 of the wage order.

Now, therefore, It is ordered, That §§ 628.3 and 628.103 of Part 628 of Chapter V, Title 29, Code of Federal Regulations, are hereby amended to read as follows:

§ 628.3 *Restriction of home work.* No work in the Handkerchief Manufacturing Industry, as defined in §§ 628.5 and 628.6, Part 628, Chapter V, Title 29, Code of Federal Regulations, shall be done in or about a home, apartment, tenement, or room in a residential establishment after April 25, 1943, except by such persons as have obtained special home work certificates issued pursuant to applicable regulations of the Wage and Hour Division, authorizing industrial home work by a worker who:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to October 7, 1942 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations.

§ 628.103 *Terms and conditions for the issuance of certificates.* If the application is in proper form and sets forth facts showing that the worker:

(a) (1) Is unable to adjust to factory work because of age or physical or mental disability; or

(2) Is unable to leave home because his presence is required to care for an invalid in the home; and

(b) (1) Was engaged in industrial home work in the industry, as defined, prior to October 7, 1942 (except that if this requirement shall result in unusual hardship to the individual home worker it shall not be applied); or

(2) Is at any time engaged in such industrial home work under the supervision of a State Vocational Rehabilitation Agency or of a Sheltered Work Shop, as defined in § 525.1, Part 525, Chapter V, Title 29, Code of Federal Regulations

a certificate may be issued authorizing the applicant employer to employ the worker in industrial home work in the Handkerchief Manufacturing Industry.

No home worker shall perform industrial home work for more than one employer in the Handkerchief Manufacturing Industry, but home work employment in another industry shall not be a bar to the issuance of a certificate for the Handkerchief Manufacturing Industry.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

Signed at New York, N. Y., this 5th day of May 1943.

L. METCALFE WALLING,
Administrator.

[F. R. Doc. 43-7313; Filed, May 10, 1943; 11:04 a. m.]

TITLE 30—MINERAL RESOURCES

Chapter III—Bituminous Coal Division

[Docket No. A-1953]

PART 323—MINIMUM PRICE SCHEDULE, DISTRICT NO. 3

ORDER GRANTING RELIEF

Order granting temporary relief and conditionally providing for final relief in the matter of the petition of District Board No. 3 for the establishment of price classifications and minimum prices for the coals of certain mines in District No. 3.

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party, requesting the establishment, both temporary and permanent, of price classifications and minimum prices for the coals of certain mines in District No. 3; for a change in the shipping points for the coals of certain mines in District No. 3; and for a change in the shipping point, railroad and freight origin group number for the coals of the E-Z #2 Mine of Chas. H. Dill in District No. 3; and

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act;

It is ordered, That, pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith § 323.6 (*Alphabetical list of code members*) is amended by adding thereto Supplement R-I, § 323.8 (*Special prices*—(e) *River coal*) is amended by adding thereto Supplement R-II, § 323.8 (*Special prices*—(f) *Ex-river coal*) is amended by adding thereto Supplement R-III, and § 323.23 (*General prices*) is amended by adding thereto Supplement T, which supplements are hereinafter set forth and hereby made a part hereof; commencing forthwith, the shipping point, railroad and freight origin group number appearing in the aforesaid Supplement R-I for the coal produced at the mine designated Mine Index No. 192 shall be as therein shown instead of the shipping point, railroad and freight origin group number heretofore applicable for this mine; and commencing forthwith, the shipping points appearing in the aforesaid Supplement R-I for the coals produced at the mines designated as Mine Index Nos. 618, 1364, 377, 639 and 1352 shall be as therein shown instead of the shipping points heretofore applicable for these mines.

It is further ordered, That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this order, pursuant to the rules and regulations governing practice and procedure before the Bituminous Coal Division in proceedings instituted pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

It is further ordered, That the relief herein granted shall become final sixty (60) days from the date of this order, unless it shall otherwise be ordered.

Dated: April 27, 1943.

[SEAL] DAN H. WHEELER, *Director.*

TEMPORARY AND CONDITIONALLY FINAL EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 3

NOTE: The material contained in these supplements is to be read in the light of the classifications, prices, instructions, exceptions, and other provisions contained in Part 323, Minimum Price Schedule for District No. 3 and supplements thereto.

FOR ALL SHIPMENTS EXCEPT TRUCK

§ 323.6 *Alphabetical list of code members*—Supplement R-I

[Alphabetical listing of code members having railway loading facilities, showing price classification by size group Nos.]

Mine index No.	Code member	Mine name	Seam	Shipping point	Railroad	Freight origin group No.	Size group Nos. 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
961	Coyner, Mark[1] (Mine Index No. 810)[4]	Coyner	Redstone	Buckhannon, W. Va.	B&O	31	F	F	F	F	F	H	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
618	Davis, A. C. (Harding Coal Co.)[1]	North	H. V. Kitt	Harding, W. Va.[2]	WM	33	J	J	J	J	J	J	H	H	H	H	(†)	(†)	(†)	(†)	(†)	(†)
192	Dill, Chas. H.[1]	E-Z #2	M. V. Freeport	Howesville, W. Va.[2]	WVN	[3]71	J	J	J	J	J	J	J	J	J	J	(†)	(†)	(†)	(†)	(†)	(†)
1364	Gallardi Coal & Coke Company (Philip Gallardi).	Ashcraft (S)	Pittsburgh	Raymond Siding, Rosebud, W. Va.[3]	B&O	62	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
243	Glenn, H. S.[1]	Franklin	Pittsburgh	Kingmont, W. Va.	B&O																	
				Chiefton, W. Va.	WM	56	DE	DE	DE	DE	DE	DE	DF	DF	DF	DF	B	B	B	B	B	B
				Kingmont, W. Va.	Monon	River	DE	DE	DE	DE	DE	DE	DF	DF	DF	DF	B	B	B	B	B	B
377	Howard, J. W. (Howard Coal Co.)[1] (Mine Index No. 1327).[4]	Island Run #1[1]	H. V. Kitt	Gage, W. Va.[2]	WM	33	J	J	J	J	J	J	H	H	H	H	(†)	(†)	(†)	(†)	(†)	(†)
1393	Nixon, R. S.	Nixon #2	Pittsburgh	Everson, W. Va.	B&O	61	DE	DE	DE	DE	DE	DE	DF	DF	DF	DF	B	B	B	B	B	B
				Kingmont, W. Va.	Monon	River	DE	DE	DE	DE	DE	DE	DF	DF	DF	DF	B	B	B	B	B	B
5	Pardee & Curtin Lumber Co.[1]	Arthur	Redstone	Lost Creek, W. Va.	B&O	60	F	F	F	F	F	H	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
1410	Pursglove, Wm. L. Coal Company	Chieftain (S)	Pittsburgh	Wilsonburg, W. Va.	B&O	60	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
51	Regal Coal Company[1]	Eagle	Pittsburgh	Hepzibah, W. Va.	B&O	62	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
1233	Rosedale Coal Company	Rosedale (S)[1]	Pittsburgh	Maidsville, W. Va.	Mongh	52	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
				Maidsville, W. Va.	Monon	River	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
132	Rosedale Coal Company	Rosedale #1[1]	Pittsburgh	Maidsville, W. Va.	Mongh	52	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
639	Rosedale Coal Company	Rosedale #1-C	Pittsburgh	Maidsville, W. Va.[2]	Mongh	52	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
1352	Rosedale Coal Company	Rosedale #1-D (S)	Pittsburgh	Maidsville, W. Va.[2]	Mongh	52	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
1412	Rosedale Coal Company	Rosedale #4	Redstone	Maidsville, W. Va.	Mongh	52	J	J	J	J	J	J	J	J	J	J	(†)	(†)	(†)	(†)	(†)	(†)
				Maidsville, W. Va.	Monon	River	J	J	J	J	J	J	J	J	J	J	(†)	(†)	(†)	(†)	(†)	(†)
1413	Rosedale Coal Company	Rosedale #5	Sewickley	Maidsville, W. Va.	Mongh	52	J	J	J	J	J	J	J	J	J	J	(†)	(†)	(†)	(†)	(†)	(†)
				Maidsville, W. Va.	Monon	River	J	J	J	J	J	J	J	J	J	J	(†)	(†)	(†)	(†)	(†)	(†)
970	Scritchfield, D. L.[1]	Scritchfield #2[1]	Pittsburgh	Kingmont, W. Va.	B&O	50	F	F	F	F	F	F	F	F	F	F	(†)	(†)	(†)	(†)	(†)	(†)
194	William Henry Coal Company[1]	Leslie #5	Bakerstown	Tunnelton, W. Va.	WVN	71	G	G	G	G	G	G	G	G	G	G	(†)	(†)	(†)	(†)	(†)	(†)

†Indicates no prices or classifications effective in these size groups.
[1] Indicates change in name.
[2] Indicates change in shipping point.
[3] Indicates change in freight origin group.
[4] Indicates deletion of mine index numbers, minimum prices, price classifications and railroad fuel groups heretofore established for the coals produced by these mines.

NOTE: The above prices are applicable only via the respective freight origin groups, shipping points and railroads shown for the respective mines. Freight origin groups, shipping points and railroads previously assigned to these mines are no longer applicable.

NOTE: For railroad fuel prices add these mine index numbers to the respective groups set forth in § 323.8 (b) and § 323.8 (c) in Minimum Price Schedule No. 1.

NOTE: To Note No. 1 in § 323.8 (b) in the Effective Schedule add Mine Index Nos. 132, 639, 1233, 1352, 1412 and 1413. These mines shall be priced at 15¢ less than shown for coal consigned to the Erie, P&LE and New York Central Railroads only.

Group No. 1: 51, 132 (a), 243, 639 (a), 970, 1233 (a), 1352 (a), 1364, 1393, 1410; Group No. 2: 5, 961; Group No. 3: 192, 377, 618; Group No. 4: 1412 (a), 1413 (a); Group No. 6: 194.

§ 323.8 *Special prices*—(e) *River coal*—Supplement R–II

NOTE: For river and ex-river shipments Mine Index Numbers 243 and 1393 will take the same prices as mines having Index Numbers 42 (a), 54, 100, 106, 113, 119, 121, 127, 130, 132, 1219, 1226 and 1233 as shown in § 323.8 (e) in Minimum Price Schedule for District No. 3, and Docket No. A–1059 with adjustments thereto, with the following exceptions:

(1) When shipments of Classification "D" Coals are made from the above mines the prices on Pages 29, 30 and 31 of Price Schedule No. 1 for District No. 3 must be increased ten cents (10¢) per net ton.

(2) When shipments of Classification "E" Coals are made from the above mines the prices on Pages 29, 30 and 31 of Price Schedule No. 1 for District No. 3 must be increased five cents (5¢) per net ton.

NOTE: For river and ex-river shipments Mine Index Nos. 1412 and 1413 will take the same prices as mines with Index Numbers 30–34–96–120–123–139 as shown in § 323.8 (e) in Minimum Price Schedule for District No. 3, and Docket No. A–1059 with adjustments thereto.

NOTE: Mine Index Numbers 243 and 1393 will take the same prices for river coal for by-product, horizontal and vertical retort, or water gas use to all destinations on the Monongahela River from Morgantown, West Virginia, upstream to headwaters of the river, both inclusive, as shown in Docket No. A–1632.

§ 323.8 *Special prices*—(f) *Ex-river coal*—Supplement R–III

NOTE: For river and ex-river shipments Mine Index Numbers 243 and 1393 will take the same prices as mines having Index Numbers 42 (a), 54, 100, 106, 113, 119, 121, 127, 130, 132, 1219, 1226 and 1233 as shown in § 323.8 (f) in Minimum Price Schedule for District No. 3, and Docket No. A–1059 with adjustments thereto, with the following exceptions:

(1) When shipments of Classification "D" Coals are made from the above mines the prices on Pages 29, 30 and 31 of Price Schedule No. 1 for District No. 3 must be increased ten cents (10¢) per net ton.

(2) When shipments of Classification "E" Coals are made from the above mines the prices on Pages 29, 30 and 31 of Price Schedule No. 1 for District No. 3 must be increased five cents (5¢) per net ton.

NOTE: For ex-river shipments Mine Index Nos. 1412 and 1413 will take the same prices as mines with Index Numbers 30–34–96–120–123–139 as shown in § 323.8 (f) in Minimum Price Schedule for District No. 3, and Docket No. A–1059 with adjustments thereto.

FOR TRUCK SHIPMENTS

§ 323.23 *General prices*—Supplement T

[Prices in cents per net ton for shipment into all market areas]

Code member index.	Mine index No.	Mine	Seam	County	Lump over 2", over 2", bottom size	Lump 2", over 2", bottom size but over 1¼"	Lump 1¼" and under, over 1¼" and under, bottom size	All nut and pea 2" and under	Run of mine, resultant over 3"	1½" and 2" clack	¾" clack
Size groups					1	2	3	4	5	6	7
Coyner, Mark[1] (Mine Index No. 810).[2]	961	Coyner	Redstone	Upshur	243	223	223	213	203	193	193
Davis, A. C.[1] (Harding Coal Co.).	618	North	H. V. Kitt	Randolph	203	203	203	173	173	163	153
Dill, Chas. H.[1]	192	E-Z #2	M. V. Freeport	Preston	245	245	245	225	225	210	200
Glenn, H. S.[1]	243	Franklin	Pittsburgh	Harrison	243	223	223	213	213	193	193
Howard, J. W. (Howard Coal Co.) (Mine Index No. 1327).[2]	377	Island Run #1.[1]	H. V. Kitt	Barbour	223	223	223	193	193	193	173
Pardee & Curtin Lumber Co.[1]	5	Arthur	Redstone	Harrison	243	223	223	213	203	193	193
Pursglove, Wm. L. Coal Company.	1410	Chieftain (s)	Pittsburgh	Harrison	243	223	223	213	213	193	193
Rosedale Coal Company.	132	Rosedale #1[1]	Pittsburgh	Monongalia.	243	223	223	213	213	193	193
Rosedale Coal Company.	1233	Rosedale (s)[1]	Pittsburgh	Monongalia.	243	223	223	213	213	193	193
Rosedale Coal Company.	1412	Rosedale #4.	Redstone	Monongalia.	243	223	223	213	203	193	193
Rosedale Coal Company.	1413	Rosedale #5.	Sewickley	Monongalia.	223	223	223	193	193	193	173
Regal Coal Company[1]	51	Eagle	Pittsburgh	Harrison	243	223	223	213	213	193	193
Scritchfield, D. L.[1]	970	Scritchfield #2.[1]	Pittsburgh	Harrison	243	223	223	213	213	193	193
William Henry Coal Company.[1]	194	Leslie #5	Bakerstown	Preston	235	235	235	210	210	200	190

[1] Indicates change in name.
[2] Indicates deletion of mine index numbers, minimum prices and price classifications, heretofore established for the coals produced by these mines.

[F. R. Doc. 43–7325; Filed, May 10, 1943; 11:08 a. m.]

Chapter VII—Defense Supplies Corporation

[Rev. Reg. 1]

PART 701—PETROLEUM COMPENSATORY ADJUSTMENTS

Compensation provided for wartime increases in the costs of supplying petroleum and petroleum products for use in the Eastern United States.

Sec.
701.1 Definitions.
701.2 Persons eligible to apply for petroleum compensatory adjustments.
701.3 Filing application for compensation.
701.4 Inspection and payment of claims.
701.5 Extra transportation and compensable product costs.
701.6 Revenue payments.
701.7 Effective date.

AUTHORITY: §§ 701.1 to 701.7, inclusive, issued under sec. 5d of the Reconstruction Finance Corporation Act, as amended, 52 Stat. 212, 54 Stat. 573; 15 U.S.C. 606b; 6 F.R. 2572.

§ 701.1 *Definitions.* When used in this regulation, the following terms shall have the following meanings:

(a) "District One" means the States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia, and the District of Columbia.

(b) "District Two" means the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee and Wisconsin.

(c) "District Three" means the States of Alabama, Arkansas, Louisiana, Mississippi, New Mexico and Texas.

(d) "Crude" means crude petroleum.

(e) "Compensable products" means all grades of gasoline, kerosene (including range oil and stove oil), distillate fuel oils (including gas oils) and residual fuel oils.

(f) "Aviation gasoline" means aviation gasoline of 87 octane, A. S. T. M., or higher and all hydrocarbon components thereof (including natural gasoline).

(g) "Miscellaneous products" means any grades of petroleum asphalt or liquid asphalt and those lubricating oils, solvents, and naphthas, which in normal times and in the absence of a tanker shortage would have been moved via tanker in bulk or refined in District One from crude moved in by tanker.

(h) "Import" means to move crude or compensable products on or after August 1, 1942, or miscellaneous products on or after March 1, 1943, from any points of actual origin in District Two or Three to any point in District One.

(i) "Normal method of transportation" means the use of ocean going tankers, either alone or in conjunction with other facilities which would have been used in normal times and in the absence of a tanker shortage in moving in bulk crude, compensable products or miscellaneous products from a point of origin outside of District One to any refinery, terminal, bulk plant or other place in District One.

(j) "Substitute method of transportation" means the use of tankers, lake steamers, tank cars, barges, pipe lines, trucks or other facilities, or a combination of any such facilities, in lieu of a normal method of transportation in moving crude, compensable products or miscellaneous products from point of actual origin outside District One to any refinery, terminal, bulk plant or other place in District One, which in normal times and in the absence of a tanker shortage would have been supplied by a normal method of transportation.

(k) "Normal origin" in the case of crude, compensable products and miscellaneous products shall be deemed to be

aboard tanker at the U. S. Louisiana and Texas Gulf Coast.

(l) "Actual origin" means:

(1) In the case of crude, other than crude transported pursuant to Petroleum Directive 63 through the war emergency pipelines system, the well producing the crude imported into District One by the substitute method of transportation.

(2) In the case of crude transported pursuant to Petroleum Directive 63 through the war emergency pipelines system, the point at which such crude is delivered to the applicant by Defense Supplies Corporation.

(3) In the case of compensable products and miscellaneous products, except those acquired under an exchange or purchase, the refinery (which term shall include natural gasoline and recycling plants) manufacturing the compensable products or miscellaneous products imported into District One by the substitute method of transportation.

(4) In the case of compensable products and miscellaneous products purchased or acquired under an exchange in District Two or Three, the point at which the compensable products or miscellaneous products imported into District One are delivered to the applicant under the sale or the exchange.

(m) "Claim" means a claim for extra transportation and compensable product costs computed in accordance with section 5 hereof.

(n) "Ceiling price" or "ceiling rate" means the maximum price or maximum rate prescribed by the Office of Price Administration or in effect under any regulation, schedule or order issued by the Office of Price Administration.

(o) "Person" means an individual, corporation, partnership, association, or legal successor or representative of any of the foregoing, but shall not include the United States or any of its political subdivisions or any agency thereof, or any other Government or any of its political subdivisions or any agency thereof.

(p) "Compensable intra-district-movement" means the movement of miscellaneous products or compensable products other than aviation gasoline made upon the prior written request of the Petroleum Administration for War, which request was approved by Defense Supplies Corporation, from a refinery, terminal or bulk storage plant in District One, to a point in District One, which movement would not normally have been made by the applicant in the absence of a tanker shortage. Except as provided in this § 701.1 (p) and in § 701.5 (a) (1) (iv) movements of products refined, purchased or otherwise acquired in District One shall not be compensable.

(q) "Revenue price increases" means increases in maximum prices heretofore or hereafter authorized by the Office of Price Administration under Revised Price Schedule 88 (Petroleum and Petroleum Products) for the express purpose of providing compensation for higher transportation costs involved in the use of substitute methods of transportation.

(r) "Revenue" means, in the case of an applicant who is a reseller, an amount equal to the volume of petroleum products sold by the applicant on or after August 1, 1942, multiplied by the applicable Revenue Price Increase in effect at time of sale; and, in the case of an applicant who is a consumer, means an amount equal to the volume of petroleum products shipped from actual origin in District Two or Three on or after August 1, 1942, and imported into District One for his own consumption, multiplied by the applicable revenue price increase in effect at destination at time of delivery to the destination.

(s) "In-transit-handling" means terminaling, storage or other handling (including loading or unloading) incurred or which would have been incurred in connection with the movement of crude, compensable products or miscellaneous products under either the substitute method or normal method of transportation, and which occurred or would have occurred subsequent to the actual origin if the substitute method of transportation is involved or subsequent to the normal origin if the normal method of transportation is involved and which occurred or would have occurred prior to the actual destination in District One which is common to both methods of transportation.

(t) "Substitute cost of in-transit-handling" means the actual cost to the applicant not to exceed at any single point the lower of (1) 4¢ per barrel, or (2) the applicable ceiling rate, if any, of in-transit-handling incurred under the substitute method of transportation in connection with all movements included in an application filed pursuant to this regulation.

(u) "Average cost of in-transit-handling" means the weighted average substitute cost of in-transit-handling per barrel of crude, compensable products and miscellaneous products on which in-transit-handling is incurred by the applicant and determined for the calendar month for which an application for petroleum compensatory adjustment is filed. If during any calendar month in-transit-handling has not been incurred under the substitute method of transportation, then "average cost of in-transit-handling" means the weighted average cost of in-transit-handling computed from time to time by Defense Supplies Corporation from average in-transit-handling rates set forth in applications filed hereunder.

(v) "Normal cost of in-transit-handling" means an amount determined by multiplying the average cost of in-transit-handling by the number of barrels of crude, compensable products or miscellaneous products moved by the substitute method of transportation each time in-transit-handling would have been incurred had it been moved by the normal method of transportation.

(w) "Special container movement" means the movement of crude, compensable products or miscellaneous products by substitute method of transportation, which movement would normally be made in bulk but which is made in special containers at the prior written request of Petroleum Administration for War after approval by Defense Supplies Corporation. Except as provided in this § 701.1 (w) and in § 701.5 (a) (1) (iv) movements of crude, compensable products or miscellaneous products shipped other than in bulk from actual origin after February 28, 1943, shall not be compensable.

§ 701.2 *Persons eligible to apply for petroleum compensatory adjustments.* Any person who produces, manufactures, acquires or purchases crude, compensable products or miscellaneous products in District Two or Three and imports the same, by substitute method of transportation, for sale or manufacture of petroleum products within District One, or who makes a compensable intra-district movement or a special container movement, may file an application for a petroleum compensatory adjustment on account of any claim for extra costs covered by this regulation. In addition to the above, any person who, during the twelve months period ended June 30, 1941, regularly imported compensable products or miscellaneous products for his own consumption within District One, and who imports, by substitute method of transportation, compensable products or miscellaneous products from District Two or Three for his own consumption in District One, shall likewise be eligible to file an application for a petroleum compensatory adjustment under this regulation.

§ 701.3 *Filing application for compensation*—(a) *Place of filing.* Applications for petroleum compensatory adjustments shall be filed with Price, Waterhouse & Co., 56 Pine Street, New York, New York.

(b) *Time of filing.* Extra transportation costs and extra compensable product costs incurred during any calendar month shall be accumulated until the end of the month and applications for petroleum compensatory adjustments on account of such costs shall be filed on or before the last day of the second calendar month following the month in which such costs are incurred.

(c) *Form of application.* All applications for petroleum compensatory adjustments shall be filed in quadruplicate on forms approved by Defense Supplies Corporation, and all information and supporting documents therein provided for shall be supplied, except that information required need not be restated after such information has once been included in a previous application filed pursuant to this regulation, provided reference is made to such previous application. A separate application shall be filed for claims accruing during each calendar month.

§ 701.4 *Inspection and payment of claims*—(a) *Advance.* As soon as an application is submitted it shall be determined by Defense Supplies Corporation whether it comes within the provisions of this regulation, and whether it appears to have been correctly and accurately prepared. If after such preliminary examination the application or any part thereof is accepted by Defense Supplies Corporation subject to final verification, then Defense Supplies Corporation will advance to the applicant

75% of that part of the claim so accepted.

(b) *Final payment of claims.* Upon receipt of any application it will be referred to accountants who will make such examinations and audits of any books, records and other supporting data as may be necessary to ascertain the facts or as may be required by Defense Supplies Corporation. Upon verification of the claim contained in any application and approval by Defense Supplies Corporation, the Corporation will pay to the applicant the amount of the verified claim less any advance previously made thereon. If the verified claim does not equal or exceed the amount of any advance made thereon, the applicant shall, upon demand, return to Defense Supplies Corporation the amount of the deficiency, and no further advances or payments shall be made to such applicant until such deficiency has been returned.

(c) *Petitions for reconsideration or interpretation.* (1) Should any claim be rejected in whole or in part or should any applicant desire an interpretation of this regulation, the applicant may request Defense Supplies Corporation to reconsider its action or issue an interpretation. If the request is in connection with a rejected claim, it must be filed within thirty (30) days after such claim is rejected. Such request shall be addressed to Defense Supplies Corporation, 811 Vermont Avenue, NW., Washington, D. C., and shall state clearly and concisely the questions involved and the applicant's views thereon.

(2) Upon the announcement of any decision or interpretation issued hereunder any applicant may within thirty (30) days apply to Defense Supplies Corporation for the right to modify or revise any claims theretofore filed which are affected by such decision or interpretation and which accrued within the period of ninety (90) days immediately preceding the first of the month following date when the decision or interpretation was announced. If Defense Supplies Corporation finds justification for reopening the claim it shall so notify the applicant and the latter may thereupon submit a new application for a petroleum compensatory adjustment which shall be processed in the same manner as though submitted within the required time.

§ 701.5 *Extra transportation and compensable product costs*—(a) *Amount of compensatory adjustment.* (1) Extra transportation and compensable product costs shall be computed on the basis of the crude, compensable products or miscellaneous products actually moved by the substitute method of transportation. The amount of the claim shall be:

(i) In case crude, aviation gasoline or miscellaneous products except asphalt are imported, the excess of (*a*) the cost of transporting crude, aviation gasoline or miscellaneous products from the actual origin to the destination in District One by the substitute method of transportation, plus, in the case of crude transported pursuant to Petroleum Directive 63 through the war emergency pipelines system, a sum equal to the difference between the price paid to Defense Supplies Corporation by the applicant for such crude and the weighted average posted field price paid by Defense Supplies Corporation for crude received at Longview, Texas, during the month that crude is delivered to the applicant, over (*b*) the cost of transporting similar crude, aviation gasoline or miscellaneous products from the normal origin to the same destination in District One by the facilities which would have been used under the normal method of transportation, plus, in the case of crude only, the applicable amount shown on Schedule A hereof. In any case where crude, other than crude transported pursuant to Petroleum Directive 63 through the war emergency pipelines system, is purchased away from the well, under the substitute method of transportation, the amount of the transportation costs from the well to the point of purchase to be included in the claim shall not exceed the difference between the price paid for such crude and the prevailing price for such crude at the well as of the date of purchase.

(ii) In case compensable products other than aviation gasoline are imported, the excess of (*a*) the value of such compensable products at the actual origin plus the cost of transporting such compensable products from the actual origin to the destination in District One by the substitute method of transportation, over (*b*) the value of similar compensable products at the normal origin plus the cost of transporting similar compensable products from the normal origin to the same destination in District One by the facilities which would have been used under the normal method of transportation.

(iii) In case asphalt is imported, the amount of the claim shall be computed in accordance with a formula to be determined by Petroleum Administration for War and approved by Defense Supplies Corporation upon appropriate application filed by the claimant. Such application shall contain all facts relating to the methods of acquisition and importation of the asphalt imported by the substitute method of transportation together with a statement of the means employed under claimant's normal method of transportation.

(iv) In the case of a compensable intra-district movement or a special container movement, the amount of the claim shall be computed in accordance with the formula contained in the written request for such movement issued by the Petroleum Administration for War and approved by Defense Supplies Corporation.

(2) In determining the amount of the claim, all taxes on the purchase, sale or distribution of crude, compensable products or miscellaneous products, including taxes paid on the cost of transportation, shall be excluded from all computations.

(3) Any person submitting an application for a petroleum compensatory adjustment shall account for all revenue. The amount of such revenue, less adjustments hereinafter provided for, shall be deducted from the amount of any claim for which an application is filed hereunder. The revenue to be deducted from the amount of claims filed hereunder shall be adjusted as follows:

(i) If the applicant is a participant in the plan for the equitable sharing of revenues and extra transportation expenses, adopted and approved March 12, 1942, under Recommendation No. 12, as amended, (Title 32—National Defense, Chapter XIII—Office of Petroleum Coordinator for National Defense), then the amount of revenue such applicant is obligated to account for under the terms of such plan may be deducted from the revenue to be credited against the applicant's claim.

(ii) If the applicant has acquired petroleum products on which a previous owner has accounted or is obligated to account for revenue accruing from the sale of such products either under the said plan or under this regulation, then the amount of such revenue may be deducted from the revenue arising from the sale of like products to be credited against the applicant's claim. Should there be an excess of deductions under this paragraph over revenue from like products, such excess shall be carried forward and may be deducted from the revenue thereafter accruing on sales of like products. Where an adjustment is claimed on the ground that a previous owner, other than the seller to applicant, is obligated to account or has accounted for the revenue, the applicant shall submit an affidavit in quadruplicate from the seller to applicant stating that the products were purchased from a person who is obligated to or has accounted for such revenues and naming such person. Upon the request of Defense Supplies Corporation the applicant shall obtain and submit to Defense Supplies Corporation any other evidence which may be requested to substantiate the adjustments under this subparagraph.

(b) *Method of determining value of compensable products other than aviation gasoline*—(1) *Value at the actual origin.* (i) If purchased by the applicant the value of compensable products at the actual origin shall be the price paid therefor.

(ii) If acquired by the applicant in District Two or Three under an exchange, the value of compensable products shall be the prevailing market price to resellers in effect at the actual origin on date of shipment therefrom for like methods of shipment.

(iii) If manufactured by the applicant, the value of compensable products shall be the applicant's wholesale price[1]

[1] "Wholesale price" as used above means an amount which is equal to the weighted average net realization to the point of actual origin for all sales to resellers (not including sales in District One or sales to service stations or other retail outlets) made by direct shipment from such point during the calendar month in which shipment under the substitute method of transportation was made from the actual origin. If sales are made on any basis other than f. o. b. point of actual origin, then "net realization" means the price the seller would have received had such sales been made f. o. b. point of actual origin at a price calculated to give the buyers the same laid down costs.

in effect at the point of actual origin for such product on date of shipment. *Provided,* That the value at the actual origin shall not exceed the lower of the prices determined as follows:

(*a*) If the actual origin is in District Three, the value of similar compensable products at the normal origin as determined under the provisions of § 701.5 (b) (2).

(*b*) The applicable ceiling price for such compensable products in effect on date of shipment.

(*c*) The prevailing market price. Upon the request of Defense Supplies Corporation the applicant shall obtain and submit to Defense Supplies Corporation such evidence as may be requested in support of the prevailing market price.

(2) *Value at the normal origin.* (i) The value of compensable products at the normal origin is shown on Schedule B hereof.

(ii) In the case of any compensable product, other than those specified in Schedule B, applicant shall procure and submit with his application a statement from the Office of Price Administration, Washington, D. C., as to the price which will be considered as the value of such compensable product at the normal origin.

(c) *Method of determining extra transportation costs.* Transportation costs, under both the normal and substitute methods of transportation, shall be computed on the basis of the crude, compensable products or miscellaneous products actually moved by the substitute method of transportation, and shall be computed to the first actual delivery point in District One which is common to both methods.

Except as hereinafter provided only costs computed or incurred in respect of the use of the following facilities may be included in an application for a Petroleum Compensatory Adjustment for extra transportation costs. The costs for the use of any facilities shall be computed on the basis prescribed below:

Facilities used	*Rate or cost to be used in computation*
Pipe line (gathering or trunk line).	Rate prescribed by or on file with an authorized regulatory body for the movement and material involved, or in the absence of such a rate, then the actual cost of the movement.
Tanker	The maximum voyage charter rate for the material and voyage involved as prescribed by the United States Maritime Commission or the War Shipping Administration.
Tank cars	Freight paid.
Barges	Rates prescribed by or on file with an authorized regulatory body for the voyage and material involved, or in the absence of such a rate, then the actual cost of the movement, provided that such rate or cost shall not exceed any applicable ceiling rate.
Lake steamers	Rates prescribed by or on file with an authorized regulatory body for the voyage and material involved, or in the absence of such a rate, then the actual cost of the movement, provided that such rate or cost shall not exceed any applicable ceiling rate.
Trucks and other transportation facilities.	Actual cost of the movement, provided that such cost shall not exceed any applicable ceiling rate.

Applications for petroleum compensatory adjustments filed pursuant to this revised regulation shall include as a deduction the normal cost of in-transit-handling and may include as a compensable item the substitute cost of in-transit-handling.

(d) *Exchanges.* When products are delivered under an exchange in District One, transportation costs shall be computed as though no exchange were involved; i. e., the cost under both the normal and substitute methods of transportation will be computed to the point in District One where delivery is made under the exchange unless a point which is common to both methods of transportation was reached prior thereto.

§ 701.6 *Revenue payments.* Any person not submitting an application for a petroleum compensatory adjustment under this regulation or submitting such an application and, in either case, having collected revenue in excess of the extra transportation and compensable product costs for which such person may have a claim under this regulation may pay such excess in revenues collected to Defense Supplies Corporation. All such payments will be received by Defense Supplies Corporation and applied toward the payment of claims filed thereunder.

§ 701.7 *Effective date.* This Revised Petroleum Compensatory Adjustments Regulation No. 1 shall become effective as of January 1, 1943.

Issued this 20th day of March, 1943.

DEFENSE SUPPLIES CORPORATION,
H. A. MULLIGAN, *President.*

SCHEDULE A

	Per barrel
Amount to be added to the cost of transporting crude, pursuant to § 701.5 (a) (1) (i) (*b*) of this Revised Regulation	17¢

SCHEDULE B

VALUE OF COMPENSABLE PRODUCTS AT THE NORMAL ORIGIN

Product	Value: Period from 8-1-42 through 3-2-43	Value: Period from 3-3-43 through 3-16-43	Value: Subsequent to 3-16-43
GASOLINE	*Cents per gallon*	*Cents per gallon*	*Cents per gallon*
Aviation:			
80-octane A. S. T. M. ethyl	7.00	7.00	7.00
73-octane A. S. T. M. ethyl	6.75	6.75	6.75
65-octane A. S. T. M. ethyl	6.50	6.50	6.50

SCHEDULE B—Continued

VALUE OF COMPENSABLE PRODUCTS AT THE NORMAL ORIGIN

Product	Value: Period from 8-1-42 through 3-2-43	Value: Period from 3-3-43 through 3-16-43	Value: Subsequent to 3-16-43
GASOLINE—continued	*Cents per gallon*	*Cents per gallon*	*Cents per gallon*
Motor:			
78-80 octane A. S. T. M. ethyl	6.75	6.75	6.75
70-80 octane A. S. T. M. ethyl	6.75	6.75	6.75
80 octane (1939 research) ethyl	6.00	6.00	6.00
72-74 octane A. S. T. M. ethyl	6.75	6.75	6.75
72-74 octane A. S. T. M. unleaded	6.75	6.75	6.75
70-72 octane A. S. T. M. ethyl	6.75	6.75	6.75
68-70 octane A. S. T. M. ethyl	6.50	6.50	6.50
68-70 octane A. S. T. M. unleaded	6.75	6.50	6.50
65-67 octane A. S. T. M. unleaded	6.25	6.25	6.25
60-64 octane A. S. T. M. unleaded	6.00	6.00	6.00
Tractor fuel:			
56-62 octane	4.75	4.75	4.75
42-45 octane	4.50	4.50	4.50
35 octane	4.25	4.25	4.25
Kerosene:			
41-43 gravity—water white	3.875	3.875	4.125
42-44 gravity	4.00	4.00	4.125
42-45 gravity	4.00	4.00	4.125
43-45 gravity	4.00	4.00	4.125
44-46 gravity	4.125	4.125	4.125
45 gravity	4.125	4.125	4.125
46-48 gravity	4.50	4.50	4.50
47-49 gravity	4.50	4.50	4.50
Range oil and stove oil:			
41-43 gravity	3.875	3.875	3.875
42-44 gravity	4.00	4.00	4.00
Distillate fuel oils:			
No. 1	3.875	3.875	3.875
No. 2	3.75	3.75	3.75
No. 3	3.75	3.75	3.75
No. 4	3.75	3.75	3.75
Gas oils:			
52 Diesel index and below	4.125	4.00	4.00
53-57 Diesel index	4.25	4.125	4.125
58 Diesel index and above	4.375	4.25	4.25
	Per barrel	*Per barrel*	*Per barrel*
Residual fuel oils:			
No. 5	$1.05	$1.05	$1.05
Navy special	1.05	1.05	1.05
No. 6	.85	.85	.85
Bunker "C"	.85	.85	.85
12.9 gravity and below		.85	.85
13.0-15.9 gravity		.97	.97
16.0-19.9 gravity		1.09	1.09
20.0-21.9 gravity		1.21	1.21
24.9 gravity and over		1.27	1.27

[F. R. Doc. 43-7403; Filed, May 11, 1943; 10:58 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VI—Selective Service System

[Amendment 153, 2d Ed.]

PART 608—EXPENDITURES OTHER THAN FOR PERSONAL SERVICES

GOVERNMENT REQUEST FOR MEALS OR LODGINGS FOR CIVILIAN REGISTRANTS

By virtue of the provisions of the Selective Training and Service Act of 1940 (54 Stat. 885, 50 U.S.C., Sup. 301-318, inclusive); E.O. No. 8545, 5 F.R. 3779, E.O. No. 9279, 7 F.R. 10177, and the authority vested in me by the Chairman of the War Manpower Commission in Administrative Order No. 26, 7 F.R. 10512, Selective

Service Regulations, Second Edition, are hereby amended in the following respect:

1. Amend § 608.45 to read as follows:

§ 608.45 *Government request for meals or lodgings for civilian registrants (Form 256).* Books containing government requests for meals or lodgings for civilian registrants (Form 256) will be made available by the Director of Selective Service and shall be issued only by a local board or a duly authorized representative of the Director of Selective Service or the State Director of Selective Service to provide necessary meals or lodgings as follows:

(a) For registrants ordered to report to an induction station of the armed forces.

(b) For a registrant ordered to report to a medical advisory board.

(c) To such other persons and for such other purposes as may be authorized by the Director of Selective Service.

(d) The value of such lodgings shall not exceed $1.50 per day per individual.

(e) The value of such meals shall not exceed $1.00 per meal per individual.

2. The foregoing amendment to the Selective Service Regulations shall be effective immediately upon the filing hereof with the Division of the Federal Register.

LEWIS B. HERSHEY,
Director.

MAY 10, 1943.

[F. R. Doc. 43-7346; Filed, May 10, 1943; 1:47 p. m.]

Chapter IX—War Production Board

Subchapter B—Executive Vice Chairman

AUTHORITY: Regulations in this subchapter issued under P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.

PART 3175—REGULATIONS APPLICABLE TO THE CONTROLLED MATERIALS PLAN

[CMP Reg. 2 as Amended May 10, 1943]

INVENTORIES

§ 3175.2 *CMP Regulation 2*—(a) *Definitions.* For the purposes of this regulation:

(1) "Item of controlled material" means any item in any class of controlled material listed in the attached Schedule A which is different from all other items in that class by reason of one or more of its specifications, such as length, width, thickness, temper, alloy, finish, method of manufacture, etc.

(2) "User of controlled material" means any person, including government operated consuming establishments, who uses any item of controlled material for production, construction, operating supplies, or maintenance or repair.

(b) *General maximum inventory limitation.* (1) No user of controlled material shall, after April 1, 1943, accept delivery of any item of controlled material if his inventory of such item is, or will by virtue of such acceptance become, greater than the quantity of such item he will be required by his current practices to put into use during the succeeding 60-day period for production, construction, operating supplies, or maintenance or repair, in order to carry out his authorized operations. The provisions of this subparagraph shall not apply to the acceptance of delivery of controlled material if the delivery is made under a specific direction of the War Production Board issued pursuant to paragraph (t) (3) (iii) of CMP Regulation 1 and the person accepting delivery, in the course of his operations, will convert such controlled material into another form of controlled material.

(2) The War Production Board may, by specific inventory direction, fix longer or shorter periods or otherwise vary the inventory limits under subparagraph (1) of this paragraph (b), for any specified person or class of persons. Any such action will be governed by the principle that inventories of materials are to be kept at the minimum consistent with sound production practice.

(3) Nothing in this regulation shall be deemed to permit any person to accept delivery of any item of controlled material if his inventory of such item is, or will by virtue of such acceptance become, in excess of a minimum practicable working inventory thereof.

(c) *Exceptions to paragraph (b).* Notwithstanding the provisions of paragraph (b), any person may accept delivery of material in excess of the prescribed limits under the following circumstances.

(1) If any producer of controlled material exercises his privilege under CMP Regulation No. 1 of making delivery prior to the delivery date specified by the user of controlled material, such delivery may be accepted and the prescribed limits exceeded to the extent that such excess results from such prior delivery.

(2) If a user of controlled material has promptly instructed a producer or other supplier to reduce, postpone, or cancel a delivery, and the material has been shipped or loaded for shipment before receipt of such instruction, delivery of such material may be accepted and the prescribed limits exceeded to the extent that such excess results from such delivery, *Provided,* The producer or supplier promptly advises such user why the delivery has been made despite the receipt of reduction, postponement, or cancellation instructions.

(3) If a user of controlled material would be authorized under paragraph (b) to accept delivery of a quantity of an item of controlled material less than the minimum shown opposite the appropriate class of controlled material on the attached Schedule A, he may accept delivery of the full minimum shown on Schedule A.

(4) If a user of controlled material has promptly instructed a producer to reduce or postpone a delivery of a special item which cannot be readily disposed of in the course of the producer's business, and the producer advises such user that he has already started production thereof, specifying the minimum quantity which he will have to complete in the light of the production he has started, such user may accept delivery of such minimum quantity and exceed the prescribed limits to the extent that such excess results from such delivery. This exception applies only to the acceptance of delivery of such special items before they are needed and not to acceptance of such special items which will not be needed at all.

(d) *Scheduling of deliveries.* Every user of controlled material must apply for allotments, schedule deliveries, and place orders in such manner that deliveries may be made without violating the provisions of this regulation. If by reason of change in authorized operations, slowing or stoppage of production, delayed delivery by a producer or other supplier, or other cause, a person who has ordered material for future delivery would, if he accepted delivery on the dates specified, exceed the limits prescribed by this regulation, he shall promptly revise and adjust his applications, outstanding orders and scheduled deliveries and, if necessary, postpone or cancel the same, directly or through his claimant agencies, so that deliveries will conform to this regulation.

(e) *Separate inventories.* (1) In determining his inventory, a person shall include all controlled material in his possession and all material held for his account by another person, but not material held by him for the account of another person.

(2) A person who has more than one operating unit may divide his operations and apply this regulation to each division independently, but he may not thereafter change such divisions without specific authorization of the War Production Board. Any person who has been operating under the Production Requirements Plan shall continue to divide his operations in the same manner as under that plan to the extent that such division is consistent with this paragraph.

(f) *Geographical application.* This regulation shall not apply to persons outside the forty-eight states and the District of Columbia except pursuant to specific direction of the War Production Board.

(g) *Prohibited deliveries.* No person shall deliver any item of controlled material if he knows or has reason to believe that acceptance of such delivery would be in violation of this regulation.

(h) *Redistribution of excess inventories.* Excess inventories of controlled materials, including inventories of materials which are not in such form as to be usable by the holder, shall be subject to redistribution to other persons by voluntary action, pursuant to Priorities Regulation No. 13, or if necessary, through requisitioning by the War Production Board.

(i) *Reports.* Users of controlled materials, including government operated consuming establishments, shall file such reports on Form CMP-7 or other designated forms, as may be required from time to time by the War Production Board.

(j) *Appeals.* Any person affected by this regulation who considers that compliance therewith would work an excep-

tional and unreasonable hardship upon him may appeal to the War Production Board, Redistribution Division, Reference: CMP Regulation No. 2, setting forth the pertinent facts and the reasons he considers he is entitled to relief.

(k) *Miscellaneous provisions*—(1) *Applicability of other orders and regulations.* All persons affected by this regulation shall remain subject to all applicable provisions of other War Production Board regulations and orders as amended from time to time.

(2) *Communications.* All communications concerning this regulation shall be addressed to: War Production Board, Redistribution Division, Washington, D. C., Reference: CMP Regulation No. 2.

Issued this 10th day of May 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

SCHEDULE A

If a user of controlled materials would be authorized under paragraph (b) to accept delivery of a quantity of an item of controlled material less than the minimum shown opposite the appropriate class of controlled material on the following schedule, he may accept delivery of the full minimum shown on the schedule.

CMP material code No.	Class of controlled material	Minimum quantities
	ALUMINUM	Lb.
	Bar and rod (excluding requirements for stock for wire, forgings, rolled structural shapes, and electrical cable)	500
4021	⅜"—¾" incl. (Maximum diameter (for rounds and ovals).	
4031	Over ¾"—1⅝" incl. Maximum distance between parallel faces (for squares, hexagonals, octagonals & rectangles.	
4041	Over 1⅝"—3" incl.	
4051	Over 3"	
4121	Wire, excluding rivet wire. (Wire covers maximum diameters under ⅜" in rounds, ovals, squares, hexes, octagonals, and rectangles)	100
4122	Rivets	25
4151	Cable (electrical transmission only)	2,000
4171	Forgings and pressings (before machining)	500
	Castings made from high-grade ingot (before machining)	500
4202	Cylinder heads for air-cooled radial engines.	
4203	Other heat treated sand castings.	
4204	Non-heat treated sand castings.	
4205	Heat treated permanent mold castings.	
4206	Non-heat treated permanent mold castings.	
4207	Cold-chamber die castings.	
4208	Gooseneck die castings.	
	Castings made from low-grade ingot (before machining)	500
4213	Heat treated sand castings.	
4214	Non-heat treated sand castings.	
4215	Heat treated permanent mold castings.	
4216	Non heat treated permanent mold castings.	
4217	Cold-chamber die castings.	
4218	Gooseneck die castings.	
4251	Rolled structural shapes (angles, channels, zees, tees, etc.)	500
	Extruded shapes	100
4301	2S, 3S, 53S, and 61S alloys.	
4311	All alloys except 2S, 3S, 53S, and 61S.	
	Sheet, strip and plate (excluding stock for foil, impact extrusions, and forgings)	200
4351	2S, and 3S alloys.	
4361	Alloys other than 2S and 3S.	
	Tubing	100
4401	2S and 3S alloys.	
4411	Alloys other than 2S and 3S.	
4501	Powder	15
4601	Foil (0.005" and thinner)	25
4701	Impact extrusions	200
	Ingot (excluding ingot for aluminum castings, sheet, plate, strip, rod, bar, extrusions, and powder)	2,000
4801	High-grade ingot.	
4811	Low-grade ingot.	

CMP material code No.	Class of controlled material	Minimum quantities
	COPPER AND COPPER BASE ALLOYS	Lb.
	Brass mill products:	
	(A) Copper base alloys:	
3001	Ammunition cups, discs, and slugs	5,000
3011	Sheet and strip (other than cups and discs)	500
3021	Rods, bars, and wire (incl. extruded shapes, not incl. slugs)	500
3041	Tubing or pipe	500
	(B) Copper:	
3051	Plate, sheets, and strip	500
3061	Rods, and bars, including extruded shapes (not including wire bars and ingot bars)	500
3071	Tube and pipe	500
	Wire mill products:	
	Copper:	
3101	Wire and cable (incl. copper content of insulated wire and cable)	500
	Foundry products:	
	Copper and copper base alloys:	
3201	Castings	500
	STEEL	
	Carbon steel (including wrought iron):	
2001	Bars, cold finished	10,000
2005	Bars, hot rolled	10,000
2011	Ingots, billets, blooms, slabs, tube rounds, skelp and sheet and tin bars	56,000
2016	Pipe	10,000
2021	Plates	10,000
2026	Rails and track accessories	56,000
2031	Sheets and strip	10,000
2036	Steel castings	10,000
2041	Structural shapes and piling	40,000
2046	Tin plate, terne plate and tin mill black plate	10,000
2051	Tubing	10,000
2056	Wheels and axles	40,000
2061	Wire rods, wire and wire products	10,000
	Alloy steel—Including stainless:	
2501	Bars, cold finished	2,000
2505	Bars, hot rolled	2,000
2511	Ingots, billets, blooms, slabs, tube rounds, sheet bar	10,000
2516	Pipe	2,000
2521	Plates	2,000
2531	Sheets and strip	2,000
2536	Steel castings	2,000
2551	Tubing (incl. pipe)	2,000
2556	Wheels and axles	40,000
2561	Wire rods, wire, and wire products	2,000

[F. R. Doc. 43-7337; Filed, May 10, 1943; 11:46 a. m.]

PART 944—REGULATIONS APPLICABLE TO THE OPERATION OF THE PRIORITIES SYSTEM

[Priorities Regulation 18]

FROZEN SCHEDULES

§ 944.39 *Priorities Regulation 18*—(a) *Definitions.* (1) "Producer" means any person whose production or delivery is subject to a "frozen schedule" as defined below.

(2) "Frozen schedule" means a production or delivery schedule approved or prescribed pursuant to any order listed in Appendix A of this regulation, or pursuant to any other order of the War Production Board which states expressly that schedules thereunder are to be deemed frozen schedules within the meaning of Priorities Regulation 18. When any such order provides that the filing of a schedule is equivalent to approval or that a filed schedule may not be varied without approval, the term "frozen schedule" means the schedule as filed with any modifications approved or prescribed by the War Production Board. When any such order requires the approval by the War Production Board of a purchase order before acceptance or delivery, the term "frozen schedule" refers to all purchase orders on the producer's books which have been so approved.

(b) *Protection of frozen schedules.* Notwithstanding any contrary provisions of any other regulation, order or other instrument issued by or under authority of the War Production Board (including AAA's and other preference rating instruments and CMP allotments), no producer shall interfere with any frozen schedule by eliminating, displacing or altering the precedence of any purchase order listed for production or delivery thereon in favor of any other purchase order unless he is specifically authorized or directed to do so by

(1) An order or direction of the War Production Board which identifies the frozen schedule and states on its face that it is an amendment of that schedule; or

(2) A special direction supplementary to a P-19-h order relating to a synthetic rubber, toluene, high octane gasoline, catalyst or other correlated project which bears an urgency number of 56 or smaller.

(c) *Notice to War Production Board.* The appropriate industry division of the War Production Board in charge of the scheduling of the particular item shall be immediately notified in writing by the producer in either of the following cases:

(1) When a special direction of the type referred to in paragraph (b)(2) above is received by the producer, requiring interference with a frozen schedule;

(2) When the producer's adherence to a frozen schedule, as required by the provisions of paragraph (b), prevents the fulfillment of a purchase order not subject to the frozen schedule, which order, in the absence of scheduling, would take precedence over any purchase order on the frozen schedule. (For example, a producer receives from the War Production Board a frozen schedule which includes a purchase order bearing a rating of AA-5. He has on his books a purchase order bearing a rating of AA-4 for another type of item not subject to a frozen schedule. If he adheres to the frozen schedule covering the AA-5 order, he will lack either materials or facilities to meet the delivery dates specified in the AA-4 order. In such case, he adheres to the frozen schedule, but immediately notifies the industry division which has frozen the schedule.)

Issued this 11th day of May 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

APPENDIX A

Production and delivery schedules approved pursuant to the following orders are "frozen schedules" within the meaning of Priorities Regulation No. 13.

Orders

E-11	L-112	L-215	M-211
L-97	L-117	L-234	M-225
L-97A	L-163	L-249	M-233
L-97B	L-172	L-269	M-293
L-100	L-192	M-50	
L-101	L-203	M-76	

[F. R. Doc. 43-7411; Filed, May 11, 1943; 11:33 a. m.]

PART 3214—MEN'S, WOMEN'S, CHILDREN'S, AND INFANTS' HOSIERY

[General Limitation Order L-274, as Amended May 11, 1943]

Section 3214.1 *General Limitation Order L-274* is hereby amended to read as follows:

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of silk, nylon, rayon, cotton, wool and other materials for defense, for private account and for export; and the following order is deemed necessary and appropriate in the public interest and to promote the national defense:

§ 3214.1 *General Limitation Order L-274*—(a) *Applicability of regulations.* This order and all transactions affected thereby are subject to all applicable provisions of the regulations of the War Production Board as amended from time to time.

(b) *Definitions.* For the purposes of this order, unless otherwise expressly defined all trade terms shall have their usual and customary meanings.

(c) *Restrictions on the manufacture of certain types of hosiery.* (1) On and after May 15, 1943, no person shall put into production women's full-fashioned plain-knit hosiery, women's seamless, circular-knit hosiery, men's hosiery, or misses', children's or infants' hosiery, except in accordance with Schedules A, B, C, D, and E, which are a part of this order, or as permitted in paragraphs (c) (2), (c) (3), and (c) (4).

(2) Any person having a substantial number of machines which on May 15, 1943, or within one year prior thereto were in use to manufacture products referred to in paragraph (c) (1), but which cannot be used or converted to produce the products permitted by this order without a substantial allotment of critical materials for conversion, may, if he desires, so report in writing to the War Production Board, attention of Textile, Clothing and Leather Division, setting forth all pertinent facts. The War Production Board, if it determines that the output of such machines is necessary to maintain production at adequate levels, may establish specifications for products to be manufactured with such machines, such specifications to apply to such products alone, and to supersede the applicable limitations of this order.

(3) The restrictions of paragraph (c) (1), and the schedules therein referred to, and any specifications established pursuant to paragraph (c) (2), do not apply to the manufacture of any hosiery for or for the account of the Army or Navy of the United States, the United States Maritime Commission, or the War Shipping Administration.

(4) Any hosiery manufacturer may use to produce hosiery not permitted by this order any material which was in his inventory on April 2, 1943, and which with his existing machines he cannot use to manufacture products permitted by this order.

(d) *Appeal.* Any appeal from the provisions of this order shall be made by filing a letter in triplicate referring to the particular provision appealed from and stating fully the grounds of the appeal.

(e) *Communications to War Production Board.* All reports required to be filed hereunder, and all communications concerning this order, shall, unless otherwise directed, be addressed to: War Production Board, Textile, Clothing & Leather Division, Washington, D. C., Ref.: L-274.

(f) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States, is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of or from processing or using, material under priority control and may be deprived of priorities assistance.

(g) *Records.* All manufacturers affected by this order shall keep and preserve for not less than two years accurate and complete records of production, type and poundage of raw materials consumed, and shipments made by date, quantity, and name of consignee.

Issued this 11th day of May 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

SCHEDULE A

WOMEN'S FULL-FASHIONED HOSIERY

(a) This schedule does not apply to full-fashioned over-all cotton hosiery of any gauge or to any so-called "Run-Proof" hosiery, or any mesh hosiery made on modified or full lace attachments, and the manufacture of such products is not restricted by this schedule. The schedule does not prohibit constructions of cotton, wool, continuous filament, or spun rayon yarn, or any combinations thereof. (b) No person shall produce any women's full-fashioned rayon plain-knit hosiery unless it meets the minimum specifications shown on the following table:

Gauge	Welt		Leg		Minimum total courses	Minimum finenes of	
	Minimum fineness of yarn	Minimum turns per inch	Minimum fineness of rayon yarn	Minimum turns per inch		Heel and sole splicing	Toe reinforcing yarn
39	150 den. rayon	8	150	8	1150	100 den. or cotton	90 2
39	80 2 cotton		150	8	1150	100 d.n. or cotton	90 2
42	150 den. rayon	8	150	8	1260	100 den. or cotton	90 2
42	80 2 cotton		150	8	1260	100 den. or cotton	90 2
42	125 den. rayon	10	100	20	1260	100 den. or cotton	90 2
42	80 2 cotton		100	20	1260	100 den. or cotton	90 2
45 or 48	150 den. rayon	8	100	20	1350	100 den. or cotton	100 2
45 or 48	100 2 cotton		100	20	1350	100 den. or cotton	100 2
45 or 48	100 den. rayon	10	75	24	1440	100 den. or cotton	100 2
45 or 48	100 2 cotton		75	24	1440	100 den. or cotton	100 2
51	100 den. rayon	10	100	20	1530	75 den. or cotton	120 2
51	120 2 cotton		100	20	1530	75 den. or cotton	120 2
51 and up	75 den. rayon	15	100	20	1620	Optional	144 2
51 and up	140 2 cotton		100	20	1620	Optional	144 2

[1] Rayon yarn qualifying as yarn of 50 denier and having an average tenacity of 2.3 grams per denier or higher irrespective of elongation.

(c) The leg length shall be 29 inches with a 1½ inch tolerance plus or minus. Any person who manufactured proportioned length hosiery outside the tolerances permitted by this paragraph (c) in 1942 may apply to the War Production Board for permission to continue such manufacture. Such application shall be in writing, and shall set forth all pertinent facts. The War Production Board may take such action on such application as it may deem proper.

(d) The minimum length of the double welt shall be 3½ inches and of the afterwelt 1½ inches. Welts of less than 3½ inches are permitted providing the single thickness portion of the welt or afterwelt is no finer than 150 denier filament rayon, or its equivalent in other fibers, when knit on machines coarser than 51 gauge; or 100 denier filament rayon, or its equivalent in other fibers, when knit on machines of 51 gauge and finer. The total all-over length of welt plus the after-welt shall not be less than 5 inches. A proportionately lower number of courses than is specified in Schedule A is permissible in the knitting of stockings where special welt constructions are used other than the standard 3½ inch double welt with 1½ inch afterwelt. No afterwelt is required in constructions where the main end or leg yarn is of 100 denier rayon or heavier.

(e) All rayon stockings of 75 denier or finer shall be made with an overlap of at least two (2) courses immediately following the afterwelt, in which the yarn of the afterwelt is to be knit together with the main end used in knitting the leg for a minimum of two (2) courses.

(f) The minimum number of needles used in knitting hosiery shall be the full 14 inch bar less two needles at each end of the bar on all gauges.

(g) The minimum number of courses are to be counted in conventional or legger-footer construction, from the first course in the welt to the loose course in the heel; in single unit or rack-back constructions, from the first course in the welt to the course in the heel on which the widest course in the rackback falls.

(h) The heel splicing shall measure 4½ inches from the bottom of the heel with a ½ inch tolerance, plus or minus.

(i) All seams shall be made with a minimum of 16 stitches to the inch and be made

of a good quality two or three ply seaming yarn.

(j) Based on a 14 inch head, the maximum number of total flare and calf narrowings shall be:

39 gauge---------- 40 narrowings.
42 gauge---------- 42 narrowings.
45 gauge---------- 44 narrowings.
48 gauge---------- 46 narrowings.
51 gauge---------- 50 narrowings.
54 gauge and up---------- Optional.

(k) The reinforcing yarn in the toe must start within 10 courses from the first toe narrowing.

(l) Where two-ply cotton yarns are specified the equivalent count in single yarns may be used. Where definite counts of cotton (but not rayon) yarn are specified in the table, no finer counts of cotton yarn may be used, but combination yarns of cotton and rayon, or cotton, rayon and wool mixed yarns, and coarser counts of cotton yarns, or spun rayon yarn of total equivalent denier or heavier may be used. No spun rayon yarn may be used as a toe splicing or reinforcing yarn.

(m) Plied ends of single rayon yarn may be used if they make the equivalent denier of yarns shown in the table. Sixty-five denier cuprammonium rayon yarn shall be deemed equivalent to 75 denier viscose yarn and may be used as an alternate wherever 75 denier is specified in the table. The use of acetate rayon yarn is not permissible in deniers finer than 75.

(n) In single unit or rack-back construction the total minimum number of courses may be no more than 40 courses less than the minimums for conventional constructions shown in the above table.

(o) No lace bands, fancy designs or numerals are to be knit in welt or afterwelt. No picot stitches are to be placed more closely than ¾ inch apart except for the top ½ inch of the welt.

(p) No manufacturer shall put in dye or knit ingrain more than 7 basic body colors for any six months spring (Jan. 1st–June 30th) or six months fall (July 1st–Dec. 31st) season and no more than five of these seven colors in any one style number in any corresponding six months period. In addition to the foregoing colors, white is also permitted.

SCHEDULE B

WOMEN'S SEAMLESS, CIRCULAR KNIT HOSIERY

(a) No manufacturer shall produce any women's seamless or circular plain-knit hosiery unless it meets the minimum specifications shown on the following table:

Needles	Welt construction			Body or boot construction if rayon		Splicing yarns when used	Heel and toe yarns	Minimum total courses of all-over rayon construction		Total minimum courses if made with cotton welts	Minimum total courses if all-over cotton construction	
	If cotton	If rayon						Boot yarn	Total courses		Welt and boot yarn	Total courses
		Denier	Minimum twist	Denier	Minimum twist							
220 and 240	50/2	150	Producers	150	Producers	50 denier, rayon, or 70/1 cotton	40/2	150	900	852	60/2	852
260	60/2	150	Producers	150	Producers	50 denier, rayon, or 80/1 cotton	50/2	150	960	912	70/2	960
280	70/2	150	Producers	150	Producers	50 denier, rayon, or 90/1 cotton	60/2	150	1068	960	80/2	1008
300	80/2	150	Producers	100	15 turns	50 denier, rayon, or 100/1 cotton	70/2	100	1104	1056	100/2	1104
320	100/2	100	10 turns	100 or 75	15 turns 20 turns	50 denier, rayon, or 100/1 cotton	80/2	100 or 75	1152	1104	120/2	1152
340	120/2	100	10 turns	75	20 turns	50 denier, rayon, or 100/1 cotton			1200	1152	120/2	1200
360 through 380	120/2	100	10 turns	75	20 turns	50 denier, rayon, or 100/1 cotton	100/2	75	1260	1212	120/2	1260
400	140/2	100	10 turns	75	20 turns	None	120/2	75	1320	1272	120/2	1320
							140/2	75	1392	1344	140/2	1356

(b) Where definite counts of cotton (but not rayon) yarn are specified in the table, no finer counts of cotton yarn may be used, but combination yarns of cotton and rayon, or cotton, rayon and wool mixed yarns, and coarser counts of cotton yarns, or spun rayon yarn of total equivalent denier or heavier may be used. No spun rayon yarn may be used as a splicing or reenforcing yarn in heel or toe.

(c) Where two-ply cotton yarns are specified in the table the equivalent counts in single yarns may be used.

(d) The leg length of women's seamless hosiery shall be 30 inches with 1½ inch tolerance plus or minus. All welts to finish a minimum of 4 inches.

(e) The specified minimum total courses are to be counted from the first course in the welt to the end of the high splicing where the reciprocating motion is started for the heel.

(f) Mesh or tuck stitch constructions in women's circular knit hosiery are restricted to the following constructions:

(1) On single-end tuck stitch knitting, no finer than one end of 100 denier rayon yarn or its equivalent in other fibres may be used in the leg, on any machine regardless of number of needles.

(2) On double-end mesh knitting no finer than 75 denier rayon yarn or its equivalent in other fibres may be used in the leg, on any machine regardless of number of needles.

(3) Minimum number of turns per inch in the rayon yarn in mesh or tuck stitch constructions are to be the same as shown in the above table for plain knit constructions for similar deniers.

(g) All sole splicing yarns are prohibited in women's circular knit all-over cotton hosiery and in women's circular knit rayon hosiery when the main end is 100 denier rayon yarn or heavier.

(h) No manufacturer of women's circular knit hosiery shall put in dye or knit ingrain more than seven basic body colors for any one six months spring or fall season, and no more than five of these seven colors in any one style number in any corresponding six months period. In addition to the foregoing colors, white is also permitted.

SCHEDULE C

MEN'S HOSIERY

(a) The following limitations apply to men's hosiery but do not apply to the manufacture of men's work socks or bundle socks made of wool, part wool, or cotton.

(b) No manufacturer may produce in any mill men's hosiery in fancy patterns which were not in actual production in such mill during the sixty-day (60) period immediately prior to April 2, 1943. Any machines that have been idle for this entire period may be set-up on patterns of the mill's choosing, but when so set-up, they are subject to the limitations of this clause.

(c) (1) In any six months' period, no one mill shall put in dye or knit ingrain more than seven (7) basic colors and no more than five (5) of such seven basic colors in any one style, to which may be added white and three War Service colors.

(2) No limitations are placed upon the use of various colors in yarns used purely for decorative purposes in men's fancy hosiery.

(d) No men's cotton hosiery is to be manufactured with any splicing or reinforcing yarn in the sole.

(e) True-ribbed tops, those knitted separately and transferred, or those knitted automatically on H-H or Komet machines, shall not be doubled, turned or hemmed. None of the limitations of this paragraph shall apply to men's hosiery made on R. I. machines.

(f) No men's hosiery is to be manufactured with any mock-seams.

SCHEDULE D

MISSES', CHILDREN'S, AND INFANTS' HOSIERY AND WOMEN'S ANKLETS

(a) No manufacturer shall put in production any fancy or novelty patterns or designs, not actually in production in the period between October 1st, 1942, and April 2, 1943.

(b) No manufacturer shall produce any children's half-socks in a foot-size larger than seven and one-half (7½); Infants' ribbed long hose may not be produced in a foot-size exceeding 5½ or in a color other than white.

(c) (1) The total finished leg-length of all women's, misses', children's, and infants' anklets either straight-up or cuff-top is not to exceed the measurements shown in Table #10 of U. S. Commercial Standards, C. S. 46-40, as follows:

TABLE 10—STANDARD LENGTHS OF ANKLETS

[Folded and single cuffs]

Size	Number of needles	Size of cylinder (diameter)	Standard length	Tolerance
		Inches	*Inches*	
5-5½	120-160	2¼-2¼	4	±¼
6-6½	120-180	2¼-3	4½	±¼
7-7½	130-200	2½-3¼	5	±¼
8-8½	140-220	2½-3½	5½	±¼
9-9½	150-240	2¾-3½	6	±¼
10-10½	160-240	3-3½	6	±¼
11-11½	120-180	3¼-3¾	6	±¼

(2) No cuff may be turned down or folded more than once, and shall not be made of more than one thickness of fabric before folding.

(3) No top or cuff either straight-up or folded is to measure when finished, more than two (2) inches in length.

(d) (1) No true-ribbed, topped-on anklets or anklets made on H-H or Komet machines, in sizes 8 and up are to be manufactured with other than straight-up tops. No cuff or turned tops. None of the limitations of this paragraph shall apply to hosiery made on R. I. machines.

(2) All folded down or cuff top anklets in sizes 8 and up are to be manufactured with sewed-on tops.

(e) No women's anklets or misses', children's or infants' hosiery shall be manufactured with any splicing or reinforcing yarn in the sole of the foot.

(f) In any six months period, no manufacturer of women's anklets, or misses', children's

or infants' hosiery shall knit or put in dye more than seven (7) basic body colors and, in staples, no more than six (6) of such basic colors in any one style and in novelties no more than four (4) of such basic colors in any one style. In addition to the foregoing colors, white is also permitted. No restriction is placed upon the use of any colored yarns in the manufacture of decorative stripes, designs and figures in any part of the women's anklets, or misses', children's or infants' hosiery.

SCHEDULE B

WOMEN'S FULL-FASHIONED ALL-OVER COTTON HOSIERY

(a) This schedule does not apply to women's cotton hosiery of the "Cut and sewed" type.

(b) No person shall produce any women's full-fashioned all-over cotton hosiery unless it meets the minimum specifications shown on the following table. Single counts of cotton yarn may be used if equivalent to the 2-ply counts shown in the table:

MAXIMUM PERMISSIBLE FINENESS OF YARN

Gauge	Welt	Leg	High heel	Sole	Lower heel total equiv.	Toe weight	Minimum total courses
39 or lower	70/2	70/2	150/2	150/2	60/2	60/2	1120
42	80/2	80/2	150/2	150/2	60/2	60/2	1200
45 and 48	100/2	100/2	120/2	150/2	60/2	60/2	1264
51 and higher	140/2	140/2	150/2	120/2	80/2	80/2	1200

(c) The finished leg length shall be 30 inches with a 1 inch tolerance plus or minus.

(d) The minimum length of welts shall be 3½ inches.

(e) The minimum number of needles used in knitting full-fashioned cotton hosiery shall be the full width of the needle bar of each gauge less the customary two needles at each end of the bar.

(f) Courses shall be counted in the same manner as specified in paragraph (g) of Schedule A.

(g) Heel splicings shall measure 4½ inches with ½ inch tolerance, plus or minus.

(h) All seams shall be made of a good quality two or three ply yarn with a minimum of 16 stitches to the inch.

(i) Narrowings shall not exceed the maximum number of total flare and calf narrowings for each gauge as shown in paragraph (j) of Schedule A.

(j) The reinforcement yarn in the toe shall start within 10 courses of the first toe narrowing.

(k) No lace bands, lace stripes, fancy designs or numerals are to be knit in the welt or after-welt. No picot stitches are to be placed more closely than ¾ inch apart except for the top ½ inch of the welt.

(l) None of the restrictions in paragraphs (b), (f), or (i) shall apply to the manufacture of any modified or full lace mesh constructions or to any jacquard mesh constructions or to any so-called "Non-run or Run-proof" constructions.

(m) No manufacturer shall put in dye or knit ingrain more than four basic body colors in any one style in any six months (January–June) Spring season or any six months July–December) Fall season.

[F. R. Doc. 43-7412; Filed, May 11, 1943; 11:33 a. m.]

Chapter XI—Office of Price Administration

PART 1340—FUEL

[MPR 323,[1] Amendment 3]

ASPHALT AND ASPHALT PRODUCTS

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Maximum Price Regulation No. 323 is amended in the following respects:

1. Section 1340.353 (c) is amended by substituting the price of $21.00 in the place of the price of $17.90 now appearing for four products opposite the reference point, Spokane, Washington, in Table II.

2. Section 1340.357 is amended to read as set forth below:

§ 1340.357 *F. o. b. warehouse and bulk plant sales*—(a) *Producers.* The maximum price f. o. b. his warehouse or bulk plant for asphalt of any producer who receives shipments at a warehouse or a bulk plant other than a terminal as defined in § 1340.360 (e) shall be determined by adding to the cost delivered at the warehouse or bulk plant $2.50 per ton. Such producer's cost delivered at the warehouse shall be the sum of his maximum price at the refinery or plant from which the shipment is made and the actual cost of transportation from such plant to the warehouse or bulk plant.

(b) *Resellers.* The maximum price f. o. b. his warehouse or bulk plant for asphalt of any dealer or reseller, other than a producer who receives shipments at a warehouse or a bulk plant other than a terminal as defined in § 1340.360 (e) shall be determined by adding to the cost delivered at the warehouse or bulk plant $2.50 per ton or an amount sufficient to give the seller the same dollars and cents mark-up that he had during the major portion of the period August 1–November 1, 1941. If such a seller did not carry inventory or received shipments of asphalt at a warehouse or bulk plant during the period specified above, then his maximum price shall be determined by adding to the cost delivered at the warehouse or bulk plant $2.50 per ton or an amount sufficient to give the seller the same dollar and cents mark-up that his most closely competitive seller had during the major portion of the period August 1–November 1, 1941. For the purposes of this section "mark-up" means the dollars and cents difference between the selling price of the asphalt and the cost thereof delivered at the warehouse or bulk plant.

A seller who maintains and does business through a warehouse or bulk plant, other than a terminal, may make shipment direct from the production point to a consumer and add $2.50 per ton or the same dollars and cents mark-up above the delivered cost to any destination as he did during the major portion of the period August 1–November 1, 1941.

Any seller who elects to use a "mark-up" computed in accordance with this section and amounting to more than $2.50 must report such "mark-up" to the Petroleum Branch of the Office of Price Administration at Washington, D. C., on or before May 31, 1943.

This amendment shall become effective May 15, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PHENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7364; Filed, May 10, 1943; 3:04 p. m.]

PART 1347—PAPER, PAPER PRODUCTS, RAW MATERIALS FOR PAPER AND PAPER PRODUCTS, PRINTING AND PUBLISHING

[MPR 30,[1] Amendment 2]

WASTEPAPER

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Section 1347.14 (h) is added to read as follows:

(h) *Charges for re-sorting, repacking, or other processing.* In any case where a person re-sorts, repacks or otherwise processes wastepaper belonging to another, the sum of the amount paid for such wastepaper by its owner, plus the amount paid by him for the processing, may not exceed the maximum price established by this regulation for the grade of wastepaper resulting from such processing. No person shall pay an amount for processing wastepaper belonging to him which, when added to the purchase price paid by him for such wastepaper, shall result in a sum which exceeds the maximum price established by this regulation for the grade of wastepaper resulting from such processing. In connection with any such processing, the owner of the wastepaper shall warrant in writing to the person processing the wastepaper that the total of the processing charge and the purchase price paid by the owner does not exceed the maximum price established by this regulation for the grade of wastepaper resulting from such processing.

This amendment shall become effective May 15, 1943.

(Pub. Laws 421 and 729, 77th Cong., E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PHENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7363; Filed, May 10, 1943; 3:03 p. m.]

PART 1347—PAPER, PAPER PRODUCTS, RAW MATERIALS FOR PAPER AND PAPER PRODUCTS, PRINTING AND PUBLISHING

[MPR 344, Amendment 1]

NEW COTTON, LINEN AND UNDERWEAR CUTTINGS

A statement of the considerations involved in the issuance of this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.*

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 2101, 3841.

[1] 7 F.R. 9732; 8 F.R. 3345.

1. Appendix A (a) (1), (2), and (87) are amended to read as follows:

Grades:	*Maximum delivered prices in cents per pound*
(1) No. 1 white shirt cuttings, table cuttings of white shirts or bleached white woven unfilled material accumulated from shirt factories or other garment or textile factories; the packing must be free of starched or loaded materials and lawns	7.25
(2) No. 1 white headings, headings of white shirt or bleached white woven unfilled material free of starched or loaded materials, lawns and thrums	7.25
* * * * *	
(87) Dark colored seamers with rubber, unbleachable colored trimmings from underwear	1.75

2. In the last sentence of paragraph (a) of Appendix A, between the words "particular" and "grade" the word "listed" is amended to read "unlisted".

This Amendment 1 to Maximum Price Regulation 344 shall become effective May 15, 1943.

(Pub. Laws 421 and 729, 77th Cong., E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7365; Filed, May 10, 1943; 3:05 p. m.]

PART 1347—PAPER, PAPER PRODUCTS AND RAW MATERIALS FOR PAPER AND PAPER PRODUCTS, PRINTING AND PUBLISHING

[MPR 349, Amendment 1]

DISTRIBUTORS' MAXIMUM PRICES FOR CERTAIN COARSE PAPER PRODUCTS

A statement of the considerations involved in the issuance of this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.*

Maximum Price Regulation No. 349 is amended in the following respects:

1. In section 1 (c) the "groundwood" and "parchment—unprinted and printed" items listed under "Wrapping, packaging and insulating papers" are amended to read as follows, and the item "parchment____Cwt." is revoked.

Wrapping, packaging, and insulating papers regardless of fibre content, finish or treatment including, but not limited to the following grades:

* * * * *

Groundwood (including newsprint used for wrapping and packaging purposes only) ---------- Cwt.

Parchment—

Rolls---------- Cwt.

Sheets---------- M

2. Section 13 (a) (17) is amended to read as follows:

(17) "Manufacturer's maximum price" means the manufacturer's maximum price for any of the commodities covered by this regulation which are now or hereafter established by any Maximum Price Regulation issued by the Office of Price Administration including the General Maximum Price Regulation, and shall include transportation charges paid by the distributor less all freight allowances.

This amendment shall become effective May 21, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7366; Filed, May 10, 1943; 3:05 p. m.]

PART 1363—FEEDINGSTUFFS

[MPR 74,[1] as Amended, Amendment 6]

ANIMAL PRODUCT FEEDINGSTUFFS

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Maximum Price Regulation 74 is amended in the following respects:

1. Paragraph (d) (1) is added to § 1363.62 to read as follows:

(1) *Maximum prices for sales of imported animal product feedingstuffs.* The maximum prices for animal product feedingstuffs imported into the continental United States f. o. b. inland conveyance at port of entry, is the maximum price for animal product feedingstuffs of the same classification and grade for the zone where the port of entry is located as determined under paragraphs (a) and (b) of this section basing the costs of bags or other containers according to their replacement cost at the port of entry. The maximum prices shall include all charges, such as duty, insurance, freight and handling charges incidental to placing animal product feedingstuffs aboard the inland conveyance at port of entry.

2. Subparagraph (2) is added to § 1363.62 (d) to read as follows:

(2) *The maximum delivered price per ton for sales of meat scraps converted from imported dry rendered tankage.* The maximum delivered price per ton for sales of meat scraps converted from imported dry rendered tankage shall be the sum of the following:

(i) Maximum price for the dry rendered tankage per ton f. o. b. port of entry.

(ii) Cost of transportation from port of entry to conversion point.

(iii) $7.50 per ton.

(iv) Freight from the point of conversion to the point of destination of the meat scraps; *Provided,* That the maximum price of the meat scraps at their destination is no greater than the maximum price would be if the dry rendered tankage had been converted into meat scraps, at the port of entry and shipped as such to the destination point of the meat scraps.

This amendment shall become effective May 15, 1943.

*Copies may be obtained from the Office of Price Administration.

[1] 7 F.R. 4177, 4762, 4884, 8214, 8832, 8948, 9820; 8 F.R. 164, 1586.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7367; Filed, May 10, 1943; 3:06 p. m.]

PART 1364—FRESH, CURED, AND CANNED MEAT AND FISH PRODUCTS

[MPR 384]

SALES BY PROCESSORS OF SALT CODFISH

In the judgment of the Price Administrator, it is necessary in order to effectuate the purposes of the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, that maximum prices be established for processors of salt codfish.

Pursuant to the above authority, the Price Administrator has established prices in this regulation that are generally fair and equitable and will effectuate the purposes of the Act, and will promote more equitable distribution of salt codfish through normal trade channels.

The maximum prices established herein are not below the average prices of salt codfish in the year 1941.

Determination of prices established herein has been made after consulting and advising with representative members of the industry which will be affected by the regulation.

A statement of considerations involved in the issuance of the regulation has been issued herewith and filed with the Division of the Federal Register.*

§ 1364.1156 *Maximum processors' prices for salt codfish.* Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, Maximum Price Regulation No. 384 (Sales by Processors of Salt Codfish), which is annexed hereto and made a part hereof, is hereby issued.

AUTHORITY: § 1364.1156, issued under Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871.

MAXIMUM PRICE REGULATION NO. 384—SALES BY PROCESSORS OF SALT CODFISH

ARTICLE I—MAXIMUM PROCESSORS' PRICES, PROHIBITION AND SCOPE OF REGULATION

Sec.

1 Maximum procesors' prices for salt codfish.
2 Sales of salt codfish at higher than maximum prices prohibited.
3 Where the regulation applies.
4 Sales to which this regulation does not apply.
5 Relation to other regulations.

ARTICLE II—LIMITATION, RECORD KEEPING, ENFORCEMENT AND AMENDMENT

6 Conditional agreement.
7 Records and reports.
8 Evasion.
9 Enforcement.

ARTICLE III—MISCELLANEOUS

10 Petitions for amendment.
11 Definitions.

Article I—Maximum Processors' Prices, Prohibition and Scope of Regulation

SECTION 1 *Maximum processors' prices for salt codfish.* (a) The prices set forth

below are maximum prices f. o. b. the shipping point nearest the processor's warehouse. The maximum prices are gross prices and the seller shall deduct therefrom his customary allowances, discounts and differentials to purchasers of different classes.

	Price per pound
Fancy codfish:	
1# wood box	$ .36
2# wood box	.35
3# wood box	.34
1# carton (loose packed)	.34
2# carton (loose packed)	.33
3# carton (loose packed)	.32
Choice codfish:	
1# wood box	.34
2# wood box	.33
3# wood box	.32
5# wood box	.31
1# carton (loose packed)	.32
2# carton (loose packed)	.31
3# carton (loose packed)	.30
5# carton (loose packed)	.29
1# carton (pressed cake)	.30
½# carton (pressed cake)	.32
Cod bits:	
1# wood box	.31
2# wood box	.30
3# wood box	.29
5# wood box	.28
1# carton (loose packed)	.29
2# carton (loose packed)	.28
3# carton (loose packed)	.27
5# carton (loose packed)	.26
Cod bits, bulk:	
20# box	.26
50# box	.25
100# box	.24
Barrel	.23
Cod middles, bulk:	
Large cod middles:	
20# box	.32
40# box	.31
Medium cod middles:	
20# box	.31
40# box	.30
Cod strips, bulk:	
Large cod strips:	
20# box	.29
40# box	.28
Regular cod strips:	
20# box	.28
40# box	.27
Whole codfish:	
Large codfish:	
50# box	.15
100# box	.14
Bundle wrapped in burlap or bulk	.13
Medium codfish:	
50# box	.14
100# box	.13
Bundle wrapped in burlap or bulk	.12
Small codfish:	
50# box	.13
100# box	.12
Bundle wrapped in burlap or bulk	.11
Shredded fish:	*Price per package*
4 oz. package	$.10
4 oz. glass tumbler	.11
5 oz. package	.12
Shredded fish, bulk:	*Price per pound*
5# box	$.31
50# box	.30
100# box	.29
200# barrel	.28
Whole hake and whole pollock:	
50# box	.11
100# box	.10
Barrel	.09
Bundle wrapped in burlap or bulk	.08
Hake strips and pollock strips:	
40# box	.17
Hake bricks and pollock bricks:	
40/1# parchment paper wrapped	.18
Whole haddock:	
50# box	.14
100# box	.13
Barrel	.12
Bundle wrapped in burlap or bulk	.11
Haddock strips:	*Price per pound*
40# box	0.20
Haddock bricks:	
40/1# parchment paper wrapped	.27
Whole cusk:	
50# box	.12
100# box	.11
Barrel	.10
Bundle wrapped in burlap or bulk	.09
Cusk strips:	
40# box	.18
Cusk bricks:	
40/1# parchment paper wrapped	.19

(b) For container sizes, or types, species, and styles of pack of salt codfish not listed in paragraph (a) the price shall be the price determined by the Office of Price Administration to be in line with the prices listed in paragraph (a). Such determination shall be made upon written request, addressed to the Office of Price Administration, Washington, D. C., and accompanied by sworn statements showing costs and usual differentials.

SEC. 2 *Sales of salt codfish at higher than maximum prices prohibited.* (a) On or after May 15, 1943, regardless of any contract, agreement, or other obligation, no processor shall sell or deliver any salt codfish and no person in the course of trade or business shall buy or receive from any processor any salt codfish at prices higher than the maximum prices established by this regulation, and no person shall agree, offer, solicit, or attempt to do any of these things.

(b) Prices lower than the maximum prices may, of course, be charged and paid.

SEC. 3 *Where the regulation applies.* The provisions of this regulation shall apply to the forty-eight states of the United States and the District of Columbia.

SEC. 4 *Sales to which this regulation does not apply.* The provisions of this regulation shall not be applicable to sales or deliveries of salt codfish to a purchaser, if prior to May 15, 1943, such salt codfish have been received by a carrier, other than a carrier owned or controlled by the seller, for shipment to such purchaser.

SEC. 5 *Relation to other regulations.* (a) On and after April 1943, the provisions of this regulation supersede the provisions of the General Maximum Price Regulation[1] with respect to sales and deliveries for which maximum prices are established by this regulation.

(b) The maximum price at which a person may export salt codfish shall be determined in accordance with the provisions of the Second Revised Maximum Export Price Regulation[2] issued by the Office of Price Administration.

Article II—Limitation, Record Keeping, Enforcement and Amendment

SEC. 6 *Conditional agreement.* No seller of salt codfish shall enter into an agreement permitting the adjustment of the prices to prices which may be higher than the maximum prices provided by sec. 1 in the event that this regulation is amended or is determined by a court to be invalid, or upon any other contingency: *Provided,* That if a petition for amendment has been duly filed, and such petition requires extensive consideration, the Administrator may grant an exception from the provisions of this section permitting the making of contracts adjustable upon the granting of the petition for amendment.

SEC. 7 *Records and reports.* (a) Every processor making a sale and every person making a purchase of salt codfish in the course of trade or business or otherwise dealing therein, other than a purchaser at retail, after May 14, 1943, shall keep for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, complete and accurate records of each such purchase or sale, showing the date thereof, the name and address of the buyer and of the seller, the price contracted for or received, the quantity and a description of the style of pack, species, types, and the container size of salt codfish.

(b) Such person shall, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942, submit such reports to the Office of Price Administration and keep such other records in addition to or in place of the records required in paragraph (a) of this section as the Office of Price Administration may from time to time require.

SEC. 8 *Evasion.* No person shall evade any of the provisions of this regulation by any scheme or device and no person shall indirectly charge or receive for salt codfish a price higher than the maximum price permitted by this regulation. No person shall, as a condition of selling any salt codfish, require a purchaser to buy any other species of fish or any other product.

SEC. 9 *Enforcement.* Persons violating any provisions of this regulation are subject to the criminal penalties, civil enforcement actions, suits for treble damages and proceedings for revocation of licenses provided by the Emergency Price Control Act of 1942, as amended.

Article III—Miscellaneous

SEC. 10 *Petitions for amendment.* Any person seeking an amendment of any provision of this regulation may file a petition for amendment in accordance with the provisions of Revised Procedural Regulation No. 1[3] issued by the Office of Price Administration.

SEC. 11 *Definitions.* When used in this maximum price regulation the term:

"Choice codfish" means fish packed from medium or large whole codfish with all large bones removed, cut and prepared for packing in boxes or cartons, numbering not more than eight pieces to the pound when packed in the 1 lb. package, and not more than 6 pieces to the ½ lb. package.

"Cod bits" mean small pieces or trimmings from large, medium, or small codfish, numbering no more than 14 pieces to the pound.

"Fancy codfish" means fish packed from large whole codfish with all large bones removed; cut and prepared for packing in boxes or cartons, numbering not more than four pieces to the pound, without napes or tail pieces.

"Large cod strips" mean codfish strips cut from large codfish, and weighing not less than 2 lbs. each.

[1] 8 F.R. 3030, 3849, 4347, 4429, 4724, 4978, 4948.

[2] 8 F.R. 4132.

[3] 7 F.R. 8361; 8 F.R. 3313, 3523.

"Large codfish" means heavy salt codfish measuring over 22 inches in length, and weighing four pounds or over.

"Loose packed" means pieces or cuts of fish packed loose.

"Measuring in length" means measurements made from the hollow of the nape to the V of the tail on the bone side.

"Medium codfish" means salt codfish measuring more than 16 inches and less than 22 inches in length, and weighing from 2 lbs. to 4 lbs.

"Person" includes any individual, corporation, partnership, association, or other organized group of persons, legal successor or representative of any of the foregoing, and includes the United States, any agency thereof, or other government, or any of its political subdivisions, and any agency of the foregoing: *Provided*, That no punishment provided by this regulation shall apply to the United States or to any such government, political subdivision, or agency.

"Pressed cake" means fish which have been placed into a mold and pressed into brick form before packaging, and is also known as a tablet and brick.

"Processor" means a person who imports and/or domestically prepares salt codfish for resale in the form in which it is received or who further treats it by curing, grading, and packaging.

"Regular cod strips" mean codfish strips cut from large or medium codfish, and weighing not less than 1 lb. each.

"Salt codfish" means cod (Gadus macrocephalus (Pacific Coast) and Gadus callarias (Atlantic Coast)), hake (Urophycis species (Atlantic Coast) and Merluccius productus (Pacific Coast)), pollock (Pollachius virens), haddock (Melanogrammus aeglefinus) and cusk (Brosme brosme) caught in the Atlantic and Pacific Oceans and adjoining waters that have been beheaded, eviscerated, and preserved by salt treatment, with a moisture content not exceeding 55%.

"Cod middles" mean steaks or cross cuts from the center of large or medium codfish, skinned, and all large bones removed, except some small fin bones.

"Strips" mean cuts made lengthwise through the middle of the back with backbone and most rib bones removed from cod, hake, pollock, haddock or cusk.

"Shredded fish" means whole codfish or codbits that have been treated by separating the fibers and shredding the fish by a combing, raking or cutting action, containing less than 45% moisture, and is also known as fibred, flossed, fluffed or spun codfish.

"Small codfish" means salt codfish measuring less than 16 inches in length, and weighing 2 lbs. or less.

"Whole codfish" means salt codfish with half of the backbone removed and containing not more than 55% moisture, and is also known by the trade as pickle cured, wet salted, wet cured, green cured or uncured.

Effective Date

This regulation shall become effective May 15, 1943.

NOTE: The reporting and recording provisions of this regulation are approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7368; Filed, May 10, 1943; 3:06 p. m.]

PART 1367—FERTILIZERS

[MPR 386]

AGRICULTURAL LIMING MATERIALS

In the judgment of the Price Administration, it is necessary and proper to establish the maximum prices of agricultural liming material, when marketed or sold as an aid to the growth of crops and plants, as those prices differ from those heretofore established under the General Maximum Price Regulation.[1]

So far as practicable, the Price Administrator has ascertained and given due consideration to the prices of agricultural liming materials prevailing between October 1 and 15, 1941, and has made adjustments for such relevant facts as he has determined and deemed to be of general applicability; and he has advised and consulted with representative members of the industry which will be affected by this regulation.

In the judgment of the Price Administrator, the maximum prices established for this regulation are and will be generally fair and equitable, and will effectuate the purposes of the Emergency Price Control Act of 1942, as amended.

A statement of the considerations involved in the issuance of this amendment has been issued simultaneously herewith and filed with the Division of the Federal Register.*

§ 1367.151 *Maximum prices for agricultural liming materials.* Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order 9250 and Executive Order 9328, Maximum Price Regulation No. 386 (Agricultural Liming Materials), which is annexed hereto and made a part hereof, is hereby issued.

AUTHORITY: § 1367.151 issued under Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.

MAXIMUM PRICE REGULATION 386—AGRICULTURAL LIMING MATERIALS

ARTICLE I—PROHIBITION AND SCOPE OF REGULATION

Article I—Prohibition and Scope of Regulation

SECTION 1 *Prohibition against dealing in agricultural liming materials at prices above the maximum.* On and after May 15, 1943, regardless of any contract (except contracts heretofore entered into with the Agricultural Adjustment Agency of the Department of Agriculture), agreement, lease or other obligation, no person shall sell or deliver, and no person, in the course of trade or business, shall buy or receive, agricultural liming materials, at prices higher than the maximum prices established herein, and no person shall agree, offer, solicit or attempt, to make such a sale, purchase or delivery.

SEC. 2 *Less than maximum prices.* Prices lower than the maximum prices established in and pursuant to this regulation may be charged and paid.

SEC. 3 *To what transactions, materials and persons this regulation applies, and its relation to other regulations*—(a) *Transactions and materials.* This regulation applies to all sales of agricultural liming materials, that is, all of the various kinds and grades of materials containing calcium or calcium and magnesium compounds when sold for use as soil amendments or conditioners including, but not limited to, ground and pulverized limestone, limestone screenings and meal, burnt lime, hydrated lime, air-slaked lime, ground and burnt mollusk shells, calcareous and dolomitic fertilizer fillers, marl, slag and by-product liming materials such as sugar house lime and acetylene lime waste.

(b) *Persons involved.* This regulation applies to producers, truckers and retail dealers who sell agricultural liming materials, and to farmers, truckers, retail dealers, cooperative farm associations, and departments and agencies of the United States Government who buy agricultural liming materials.

(c) *Scope of this regulation and its relation to other regulations*—(1) *Geographical scope.* This regulation applies only in the forty-eight states of the United States and in the District of Columbia and does not apply to Puerto Rico and other territories and possessions of the United States.

(2) *Contractual scope.* The provisions of this regulation apply to all sales and contracts of sale for agricultural liming materials, except contracts of sale entered into with, or awards made by, the Agricultural Adjustment Agency of the Department of Agriculture before the effective date of this regulation.

(3) *Relation to the General Maximum Price Regulation.* The provisions of this regulation supersede the provisions of the General Maximum Price Regulation with respect to sales and deliveries for which maximum prices are established by this regulation. The following sections of the General Maximum Price Regulation and amendments to them, shall apply to sellers of agricultural liming materials:

(i) Transfers of business or stock in trade (§ 1499.5).
(ii) Sales for export (§ 1499.6).
(iii) Federal and state taxes (§ 1499.7).
(iv) Current records (§ 1499.12).
(v) Registration (§ 1499.15).
(vi) Licensing (§ 1499.16).
(vii) Penalties (§ 1499.17).
(viii) Adjustment of maximum prices (§ 1499.18).

(4) *Relation to Revised Procedural Regulation No. 1.* An application for an adjustment, a petition for an amendment, or a protest shall be filed with the Office of Price Administration in the manner provided under Revised Procedural Regulation No. 1.[2]

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* Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 3096, 3849, 4347, 4486, 4724, 4978, 4848.

[2] 7 F.R. 8961; 8 F.R. 3313, 3533.

Article II—Maximum Prices

SEC. 4 *Sales by producers*—(a) *Bulk sales f. o. b. plant.* The maximum price which a producer may charge on bulk sales of agricultural liming materials f. o. b. plant (loaded on railroad freight car, truck, barge, boat or other conveyance at the point of production) is the highest price calculated according to Rule 1, Rule 2, or Rule 3, as the producer chooses. For sales in bags, Rule 4 shall be used. For sales at stockpile or railroad siding, Rule 5 shall be used. For sales on delivered, or delivered and spread basis, Rule 6 shall be used.

Rule 1: Maximum prices based on March or April 1942 ceilings. The maximum price calculated according to this rule shall be the highest f. o. b. plant price the producer charged each class of purchaser for the same or similar kind and grade during March or April, 1942 (if a producer had no f. o. b. plant price see (b) below).

Rule 2: Maximum prices based on AAA awards. The maximum price calculated according to this rule shall be the f. o. b. plant price at which an award was made to the producer by the Agricultural Adjustment Agency between September 12, 1942, and May 15, 1943 (if a producer has no f. o. b. plant price see (b) below), except that, if sales to farmers, dealers or truckers were customarily made at higher or lower prices than such AAA award price, the higher price may be maintained or the lower price shall be maintained as the case may be, by adding to or deducting from such award price the customary dollar-and-cent differential.

Rule 3: Maximum prices based on 1941 average prices. Instead of following Rule 1 or 2, the producer may calculate a new f. o. b. plant price by subtracting his average production cost per ton during the calendar or his fiscal year ending in 1941, from his average present production cost per ton, and adding the difference to his average 1941 price for each class of purchaser and kind and grade of material.

The producer's average 1941 production cost per ton is arrived at by adding all of the applicable items of his 1941 costs of all of his materials of the same kind and dividing the addition by the total number of tons of all such materials produced at his plant during 1941.

The producer's average present production cost per ton is arrived at by adding all of the applicable items of his costs between November 1, 1942 and April 30, 1943, and dividing the sum by the total number of tons of all such materials produced at his plant during that period. The applicable items of production costs used in arriving at both averages shall correspond, and may include labor, raw materials, power, heat, maintenance, repair and depreciation of equipment, rentals, insurance, and taxes, except income and excess profits taxes.

A producer, who produces different kinds of agricultural liming materials, shall calculate the average production cost of each kind of material separately. For example, burnt lime and hydrated lime are of one kind and shall enter into the same calculation of the average production cost for that kind. On the other hand, crushed limestone, limestone sand, fluxing stone, and various grades of agricultural limestone are materials of another kind and shall enter into a separate calculation of average production cost for such kind.

Such new maximum f. o. b. plant price so calculated shall not exceed the average price for each class of purchaser and kind and grade of material for the calendar or fiscal year 1941, by more than 30 cents per ton on agricultural liming materials sold for not more than $2.00 per ton during such period, or by more than 15 per cent on agricultural liming materials sold for more than $2.00 per ton.

Rule 4: Maximum prices for sales in bags. For sales f. o. b. producer's plant of agricultural liming materials in bags, the producer shall calculate his maximum price by adding to the f. o. b. plant price, as determined under Rule 1, 2 or 3 above, 25 cents per ton plus the cost of the bags.

Rule 5: Maximum prices for sales at stockpiles or railroad sidings. Where the producer establishes a stockpile at a place other than in the vicinity of his plant, or ships from a railroad siding not in the vicinity of his plant, he may add to the maximum price as determined under the foregoing rules, an amount equal to the actual cost to him of handling and transporting the material from his plant to the stockpile or railroad siding.

Rule 6: Maximum prices for a delivered or delivered and spread sale. The producer's maximum price under this rule shall be his applicable f. o. b. plant, stockpile or railroad siding price as established under the foregoing rules, plus an amount equal to his handling and delivery cost, plus his cost of spreading, if any. (For flat delivered price, see section 8 below.)

(b) *Calculation of an f. o. b. plant price from a delivered price.* Where the producer had no f. o. b. plant price to which to apply Rule 1, 2 or 3 above, his f. o. b. plant price shall be calculated by deducting from his delivered, or delivered and spread, price an amount equal to his average cost of delivery, or delivery and spreading, of the agricultural liming materials, during the applicable period; where the producer's delivered, or delivered and spread, prices varied among delivery areas, he shall calculate his f. o. b. plant price by deducting from such delivered price in the county or political subdivision in which his plant is located, or nearest thereto, an amount equal to his average cost of delivery, or delivery and spreading, of the material, during the applicable period.

SEC. 5 *Sales by truckers.* A trucker, or one who purchases agricultural liming materials for resale and delivery by truck to the consumer's premises, shall calculate his maximum price by adding to his net cost at producer's plant, stockpile or railroad siding an amount equal to the trucker's cost of handling and delivery to the consumer's premises, plus spreading cost, if any, plus the dollars-and-cents customary or average markup over his cost, which he charged in 1941. (For flat delivery price, see section 8 below)

SEC. 6 *Sales by retail dealers.* A retail dealer shall calculate his maximum price by adding to his cost of materials at the producer's plant, stockpile or railroad siding, or his own warehouse or place of business, as the case may be, his actual expenditure, if any, for transportation to his warehouse or place of business, plus an amount equal to the dealer's cost of handling and delivery, to the consumer's premises, plus spreading cost, if any, plus the dollars-and-cents customary or average markup over his cost, which he charged in 1941. (For flat delivered price, see section 8 below)

SEC. 7 *Sales by new sellers.* Where a person becomes a seller of agricultural liming materials after the effective date of this regulation, his maximum price to each class of purchaser is the maximum price for the same or similar kind or grade of agricultural liming materials of his most closely competitive seller of the same class. (For flat delivered price, see section 8 below)

SEC. 8 *Sales at flat prices.* Any seller of agricultural liming materials may charge for deliveries within any single county or political subdivision thereof, one maximum flat delivered, or delivered and spread, price. Such maximum flat price for a producer shall be calculated under Rule 6 above. Such maximum flat price for a trucker shall be calculated under section 5 above. Such maximum flat price for a retail dealer shall be calculated under section 6 above. Such maximum flat price for a new seller shall be established under section 7 above. However, in calculating his maximum flat price, the seller, in applying the rule or section applicable to him, shall include therein his handling and delivery cost, and his costs of spreading, if any, referred to in such rule or section, by listing all, or a representative group of, his prospective deliveries, or delivered and spread sales, in the particular county or political subdvision thereof, and averaging his actual or estimated costs of such handling and delivery, or costs of delivering and spreading, as the case may be, in such county or political subdivision thereof.

Article III—Miscellaneous

SEC. 9 *Reporting new prices.* Every producer, who follows Rule 3 in calculating a maximum price, shall submit to the Office of Price Administration, Washington, D. C., in writing, his calculations, showing, in detail, how he determined his average production cost per ton during the calendar or fiscal year 1941, the average present production cost per ton, the average price or prices during the calendar or fiscal year 1941, and the new price or prices for each kind and grade of agricultural liming materials to each class of purchaser. Every person who becomes a new producer, after the effective date of this regulation, shall report to the Office of Price Administration, Washington, D. C., his maximum, or less than maximum prices, determined as provided in section 7 above.

SEC. 10 *Imports.* The provisions of this regulation do not apply to the purchases, sales or deliveries of the commodities named in this regulation if they originate outside of and are not imported into continental United States. Sales, purchases and deliveries of such imported commodities are governed by the provisions of the General Maximum Price Regulation, and especially Revised Supplementary Regulation No. 12.

This regulation shall become effective this 15th day of May 1943.

NOTE: The record-keeping and reporting provisions of this regulation have been approved by the Bureau of the Budget in accordance with The Federal Reports Act of 1942.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7363; Filed, May 10, 1943; 3:05 p. m.]

PART 1389—APPAREL

[MPR 385]

SPECIFIED MILITARY UNIFORMS

A statement of the considerations involved in the issuance of this Maximum Price Regulation No. 385 has been issued simultaneously herewith and filed with the Division of the Federal Register.* In the judgment of the Price Administrator, the maximum prices established by this Maximum Price Regulation are and will be generally fair and equitable and will effectuate the purposes of the Emergency Price Control Act of 1942.

§ 1389.601 *Maximum prices for specified military uniforms.* Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and by Executive Order 9250, Maximum Price Regulation 385 (Specified Military Uniforms), which is annexed hereto and made a part hereof, is hereby issued.

Authority § 1389.601 issued under Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871.

MAXIMUM PRICE REGULATION 385—SPECIFIED MILITARY UNIFORMS

CONTENTS

SECTION 1 *Scope of this regulation*—(a) *What uniforms are covered.* This regulation fixes maximum prices for sales at retail, sales at wholesale, and sales by manufacturers of certain ready-made summer uniforms for United States military officers and officers of other services. Only uniforms on the following list which are made of a principal fabric of cotton, rayon, mohair, a combination of these fibers, or of these principal fibers in combination with other fibers are covered by this regulation:

United States Army Officers' khaki summer uniforms

United States Army Officers' white summer uniforms

United States Navy Commissioned and Warrant Officers' and Chief Petty Officers' khaki summer working uniforms

United States Navy Commissioned and Warrant Officers' white service uniforms

United States Navy Chief Petty Officers' white double-breasted uniforms

United States Navy Commissioned and Warrant Officers' blue double-breasted service uniforms, labeled "Palm Beach"

Marine Officers' khaki summer service uniforms

Marine Officers' white dress uniforms.

*Copies may be obtained from the Office of Price Administration.

Separate pants are covered by this regulation only if manufactured by persons who regularly manufactured full suits of military uniforms at the date this regulation became effective. Persons who began regularly to manufacture full suits of military uniforms after the effective date of this regulation must send written notice to the Office of Price Administration, Washington, D. C. that they are regularly in the business of manufacturing full suits of military uniforms before they are permitted to deliver separate pants priced under this regulation.

(b) *Other provisions.* Included in the regulation are provisions which relate to marking and other requirements to which sellers must conform. All sellers are prohibited from selling at higher-than-ceiling prices but they may, of course, charge less.

SEC. 2 *Ceiling prices for sales at retail*—(a) *Prices.* Ceiling prices for sales at retail other than sales by manufacturing-retailers of the uniforms listed in section 1 (a), are prices equal to 150% of net invoice cost. However, the ceiling price for sales at retail of uniforms labeled "Palm Beach", on which the manufacturer has already established retail resale price of $19.95 per uniform, including regulation metal buttons, shall be $19.95 for the suit, $14.65 for the coat alone and $5.30 for the pants alone. "Net invoice cost" means price on the face of the invoice less transportation costs and less all discounts available to the retailer. The ceiling price for a sale at retail by manufacturing-retailers shall be prices equal to 140% of the maximum prices indicated in Table I, Appendix A for manufacturers and wholesalers. The ceiling prices include alterations of pants waistband and of pants and sleeve bottoms. An additional maximum charge of $1.00 per set may be made for furnishing regulation metal coat buttons if desired by the purchaser.

(b) "Sales at retail" are sales directly to United States military officers and officers of other services.

(c) "Sales at retail by manufacturing-retailers" are sales directly to United States military officers and officers of other services by any person who is a manufacturer of the uniforms listed in section 1 (a) or for whom such uniforms are manufactured by an agent or contractor.

SEC. 3 *Maximum prices for sales at wholesale and by manufacturers*—(a) *Prices.* The maximum prices for sales at wholesale and by manufacturers of uniforms listed in section 1 (a) are the prices set forth in Table I, Appendix A.

(b) "Sales at wholesale" are sales otherwise than at retail of uniforms which the seller received in substantially the form in which he sells them.

(c) "Sales by manufacturers" are sales otherwise than at retail of uniforms which the seller has fabricated or which have been fabricated for him by an agent or contractor.

SEC. 4 *When tax may be added.* If a statute or ordinance permits a tax to be separately stated, the seller is permitted to charge or collect, in addition to the price, a tax on the sale or delivery of the uniform provided he states the tax separately. This applies, however, only to a tax on a particular sale or delivery such as a gross tax or compensating use tax. Taxes on prior sales or deliveries may not be added.

SEC. 5 *When to apply for prices.* Uniforms listed in section 1 (a) of this regulation, for which no prices are set in sections 2 and 3 can be priced only by specific authorization from the Office of Price Administration. A seller who seeks such an authorization must file with the Office of Price Administration, Washington, D. C., an application setting forth the following:

(a) The official military regulation title number for the uniform for which a maximum price is sought.

(b) A complete description of the fabric; its weight, fiber content, width, cost per yard and source of purchase, together with a sample thereof.

The Office of Price Administration may request the seller to submit such other information as it may require.

SEC. 6 *Adjustable pricing.* Any person may offer or agree to adjust or fix prices not in excess of the maximum prices in effect at the time of delivery. In an appropriate situation where a petition for amendment requires extended consideration, the Price Administrator may, upon application, grant permission to agree to adjust prices upon deliveries made during the pendency of the petition, in accordance with the disposition of the petition.

SEC. 7 *Specifications of uniforms.* Army uniforms listed in section 1 (a) of this regulation must be manufactured in accordance with "Army Regulations 600-35" as changed or amended to April 1, 1943.

Navy uniforms listed in section 1 (a) of this regulation must be manufactured in accordance with "Uniform Regulations, United States Navy, 1941."

Marine Corps uniforms listed in section 1 (a) of this regulation must be manufactured in accordance with "Uniform Regulations, U. S. Marine Corps, 1937" as amended, or changed to April 1, 1943.

SEC. 8 *Information to purchasers*—(a) *Marking.* On and after May 15, 1943, a manufacturer, wholesaler or manufacturing retailer, before delivering any uniform covered by this regulation, shall be required to have marked on the size ticket or other appropriate ticket of each coat and each pair of pants covered by this regulation, MPR 385, the maximum retail price for coat and pants sold as a suit, the maximum retail price for coat only and the maximum retail price for pants only. Separate pants and coat not manufactured as part of a full uniform suit shall be marked only with the maximum retail price of the coat or pants. On and after May 15, 1943 no retailer or manufacturing retailer shall sell or deliver any garment covered by this regulation unless such garment is correctly marked. The following is an example of the marking ticket for use on one fabric of Navy Commissioned and Warrant Officers' and C. P. O. khaki summer working uniform which a retailer has purchased at the manufacturer's maximum price of $10.25. The ticket is to be used where the garment is sold as a suit or where pants or coat are sold separately.

Retail Ceiling Price (MPR 385)

Suit	$15.38
Coat only	10.50
Pants only	4.88

Where a uniform is actually sold to a retailer for less than the manufacturer's maximum price, the retail ceiling price is marked up 150% on this reduced price, and coat and pants are marked in proportion to the suit.

For example, where the net invoice cost to the retailer of the same uniform is $10.00 (rather than the manufacturer's maximum price of $10.25) the uniform would be marked with a retail ceiling of $15.00 (150% of $10.00). The retail coat ceiling of this $15.00 suit should have the same relation to the retail coat ceiling of the $15.38 suit as 15 has to 15.38. Since the retail coat ceiling of the $15.38 suit was $10.50, you take 15/15.38 of $10.50, giving you the retail coat ceiling of the $15.00 suit, which is $10.24. The retail ceiling price of the pants is found by subtraction ($15.00—$10.24) and is, therefore, $4.76. Following is an example of the marking of this uniform.

Retail Ceiling Price (MPR 385)

Suit	$15.00
Coat only	10.24
Pants only	4.76

(b) *Sales slips.* Any person who has customarily given a purchaser a sales slip or similar evidence of purchase, must continue to do so. Upon request from any purchaser, any seller, regardless of previous custom, must give to the purchaser a receipt showing the date, the name and address of the seller, and the style number of any uniform sold hereunder and the price received for it.

(c) *Notification to retailers.* Every manufacturer or wholesaler delivering uniforms covered by this regulation to a retailer must within 10 days of the first delivery to such purchaser after May 15, 1943 supply such purchaser with the text of this regulation. But if the first delivery is made prior to June 4, 1943, the text of this regulation may be supplied within 10 days of June 4, 1943.

SEC. 9 *Records.* Every person selling uniforms under this regulation must keep and make available for examination by the Office of Price Administration, all invoices and also records of the same kind as he has customarily kept, relating to the prices which he charged for uniforms, of the kinds listed in section 1 (a) of this regulation.

SEC. 10 *Transactions which are prohibited.* On and after May 15, 1943, regardless of any contract or other obligation, every person is forbidden from doing any of the following acts:

(a) *Charging more than the maximum price.* Every person is forbidden to sell or deliver directly or indirectly any of the uniforms listed in section 1 (a) of this regulation in the course of trade or business for a higher price than the maximum price set by this regulation.

(b) *Buying or receiving for more than the maximum price.* Every person is forbidden to buy or receive any of the uniforms listed in section 1 (a) of this regulation in the course of trade or business for a higher price than the maximum price set by this regulation.

(c) *Combination sales.* Every person is forbidden in the course of trade or business to make a sale of any uniform subject to this regulation which is conditioned directly or indirectly on the purchase of any other commodity or service. A coat and pants forming a suit may be sold in combination, however.

(d) *Indirect violations.* Every person is forbidden to do any act which directly or indirectly increases above the maximum price the consideration paid by the purchaser for uniforms. Any practice which is a device to secure the effect of a higher-than-ceiling price is as much a violation of the regulation as an outright raising of the maximum price. This applies to devices making use of commissions, services, transportation arrangements, premiums, discounts, special privileges, tying agreements, trade understanding, and similar practices.

(e) *Attempted violations.* Every person is forbidden to offer, solicit or attempt to do any of the acts forbidden in paragraphs (a), (b), (c) and (d).

SEC. 11 *Enforcement.* Persons violating any provisions of this Maximum Price Regulation No. 385 are subject to the criminal penalties, civil enforcement actions, suits for treble damages and proceedings for suspension of licenses provided by the Emergency Price Control Act of 1942, as amended.

SEC. 12 *Licensing.* The licensing provisions of section 16 of the General Maximum Price Regulation shall apply to every person selling at wholesale or at retail any uniforms for which maximum prices are established by this regulation. Section 16 provides, in brief, that a license is required of all persons selling at wholesale or at retail commodities for which maximum prices are established. A license is automatically granted. It is not necessary to apply for the license. The license may be suspended for violations in connection with the sale of any commodity to which the license applies. No person whose license is suspended may sell any such commodity during the period of suspension.

SEC. 13. *How this regulation may be amended.* Any person seeking an amendment which will have general applicability may file a petition for amendment in accordance with the provisions of Revised Procedural Regulation No. 1[1] issued by the Office of Price Administration.

SEC. 14. *Relation of this regulation to other maximum price regulations.* (a) General Maximum Price Regulation,[2] Maximum Price Regulation No. 177,[3] Maximum Price Regulation No. 157,[4] and Maximum Price Regulation No. 142.[5] With respect to sales of all uniforms listed in section 1 (a), this regulation supersedes the provisions of General Maximum Price Regulation (except as stated in section 12), Maximum Price Regulation No. 177, entitled "Men's and Boys' Tailored Clothing," Maximum Price Regulation No. 157, entitled "Sales and Fabrication of Textiles, Apparel and Related Articles for Military Purposes," and Maximum Price Regulation 152, entitled "Summer Seasonal Commodities."

(b) *Maximum Price Regulation No. 172.*[6] Contractors' charges for fabrication of uniforms are not subject to this regulation but are governed by Maximum Price Regulation No. 172, entitled "Charges by Contractors in Apparel Industry." The term "contractor" is defined in § 1389.52 (d) of Maximum Price Regulation No. 172.

SEC. 15 *Where this regulation applies.* (a) This regulation applies to the Continental United States and the District of Columbia, but not to the territories and possessions of the United States.

(b) This regulation does not apply to export sales, which are governed by the Second Revised Maximum Export Price Regulation.[7]

[1] 7 F.R. 6301, 8 F.R. 3313, 3533.
[2] 8 F.R. 3036, 3039, 4347, 4485, 4724, 4843, 4973.
[3] 7 F.R. 6182, 7475, 6732, 7109, 7844, 8340, 8339, 4243.
[4] 7 F.R. 4273, 4541, 4618, 5180, 5716, 6004, 6421, 6349, 8 F.R. 3348.
[5] 7 F.R. 3353, 3729, 5179, 5529, 6345, 6343.
[6] 7 F.R. 4832, 6284, 8351, 8349, 10394.
[7] 8 F.R. 4132.

Appendix A: Maximum prices for sales at wholesale and by manufacturers

TABLE I

[Schedule of maximum prices for sales at wholesale and sales by manufacturers of uniforms listed in section 1 (a). Prices are f. o. b. point of shipment. Terms are net 30 days or net 10 days E. O. M.]

Uniform Type	Cotton twill poplin or duck. Single ply carded yarn, 6 oz. or heavier per sq. yd. Sanforized. Max. price			Cotton twill 108 x 72 2 ply warp and 1 filling carded yarn 6 oz. or heavier per sq. yd. Sanforized. Max. price			Cotton twill or gabardine 2 ply warp filling carded yarn 8 oz. or heavier per sq. yd. Sanforized. Max. price			"Palm Beach" cloth, or labric. Prior to issuance of this regulation mixed coat buttons. Max. price		
	Suit	Coat	Pant	Suit	Coat	Pant	Suit	Coat	Pant	Suit	Coat	Pant
Army Officers' khaki summer uniform							$10.75	$7.50	$3.25	$13.72	$10.13	$3.63
Army Officers' white summer uniform							10.75	7.50	3.25	13.72	10.13	3.63
Navy Commissioned and Warrant Officers' & C. P. O. khaki summer working uniform							10.25	7.00	3.25	13.72	10.13	3.63
Navy Commissioned and Warrant Officers' white service uniform	$7.00	$4.00	$2.40	$8.4	$5.00	$2.00	9.00	5.75	3.25			
Navy C. P. O. white D. B. uniform	6.00	4.10	2.40	7.0	5.00	2.00	8.00	5.25	3.25			
Navy Commissioned and Warrant Officers' blue D. B. uniform										13.72	10.13	3.63
Marine Officers' khaki summer service uniform							10.75	7.50	3.25			
Marine Officers' white dress uniform							10.75	7.50	3.25			

This Maximum Price Regulation No. 385 shall become effective on May 15, 1943; except that as to sales at retail of uniforms received by retailers prior to May 10, 1943, it shall become effective on June 4, 1943.

NOTE: The records and reports provisions of this regulation have been approved by the Bureau of the Budget under the Federal Reports Act of 1942.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7354; Filed, May 10, 1943; 3:07 p. m.]

PART 1411—COMPENSATORY ADJUSTMENT

[Comp. Adj. Reg. 1,[1] Amendment 7]

WARTIME INCREASES IN THE COST OF TRANSPORTING COAL

Compensatory Adjustment Regulation No. 1 is amended in the following respects:

1. Section 1411.3 (a) (1) (ii) is amended by inserting after the phrase "the same business establishment" the clause *"Provided, however,* That where the transportation cost incurred by a dock operator for southern bituminous coal transshipped via tidewater from Hampton Roads, to an unloading port north of and including New York Harbor, during the period December 15–31, 1941 was abnormally and substantially higher by reason of wartime shipping conditions, than the cost incurred during the same period by competitive dock operators for the same transportation and the prices charged by the applicant during such period did not reflect his higher transportation cost, a request for special adjustment may relate to the difference between the highest cost incurred for such transportation during the period December 15–31, 1941 by a competitive dock operator not so affected by wartime shipping conditions and the transportation cost incurred by the applicant on and after May 18, 1942 for bituminous coal transported to the same business establishment."

2. Section 1411.4 (a) (1) is amended to read as follows:

(1) "Person" includes: an individual; corporation; partnership; association or any other organized group of persons; the legal successor or representative of any of the foregoing; and the transferee of the business, assets or stock in trade of any such person. It shall not include the United States or any agency thereof, any other government or its political subdivisions, or any agency of the foregoing other than a municipally owned or operated utility plant for the production and distribution of gas or electricity.

3. Section 1411.4 (a) (4) is added to read as follows:

(4) "Business establishment" includes a yard, dock or other facility used for the storage and sale of coal; a shop, factory or other industrial plant; a public utility; and a school, college, university, hospital or other institution unsupported by funds obtained from the Federal or state governments or any political subdivision thereof.

This Amendment No. 7 shall be effective as of May 18, 1942.

NOTE: The reporting provisions of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7356; Filed, May 10, 1943; 3:06 p. m.]

[1] 7 F.R. 3749, 3900, 6005, 6149, 7744, 10531, 8 F.R. 3629, 4721.

PART 1438—NONMETALLIC MINERALS

[MPR 327,[1] Amendment 2]

CERTAIN NONMETALLIC MINERALS

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Maximum Price Regulation No. 327 is amended in the following respects:

1. The heading of § 1438.2 (b) is amended to read as follows:

(b) *Maximum prices for certain commodities sold by the American Abrasive Company, Kyanite Products Corporation, the Metals Reserve Company, the Minnesota Mining & Manufacturing Company, the Pan-Chemical Company, the Western Feldspar Milling Company, the Yancey Cyanite Co., and others.*

2. Section 1438.2 (b) (8) is added to read as follows:

(8) The St. Lawrence Graphite Co., Morristown, New York and the Southwestern Graphite Company, Burnet, Texas, may sell or deliver, and any person may buy or receive from the St. Lawrence Graphite Co. or Southwestern Graphite Company, any of the following grades of domestic crystalline graphite concentrates, 80% of which will pass through a 50-mesh screen, at prices no greater than those set forth in the following table:

Carbon content:	*Price per pound f. o. b. seller's plant or warehouse*
65% but less than 70%	4½¢
70% but less than 75%	5 "
75% but less than 80%	5½"
80% but less than 85%	6 "
85% but less than 90%	7 "
90% and up	8 "

3. Section 1438.2a is hereby revoked.

This amendment shall become effective May 15, 1943.

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 2154, 4645.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7352; Filed, May 10, 1943; 3:08 p. m.]

PART 1447—GLUE STOCK

[MPR 383]

CERTAIN SALES OF PRAIRIE BONES

A statement of the considerations involved in the issuance of this regulation has been issued simultaneously herewith and filed with the Division of the Federal Register.*

§ 1447.1 *Maximum prices for certain sales of prairie bones.* Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, Maximum Price Regulation No. 383 (Certain Sales of Prairie Bones), which is annexed hereto and made a part hereof, is hereby issued.

AUTHORITY: § 1447.1 issued under Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871.

MAXIMUM PRICE REGULATION NO. 383—CERTAIN SALES OF PRAIRIE BONES

CONTENTS

SECTION 1 *Prohibition against sales of prairie bones above maximum prices*—(a) *Definition.* "Prairie bones" means prairie or junk bones obtained from dry and bleached carcasses of fallen animals, the partially degreased cooked bones from slaughter houses not having complete facilities for drying and processing, sometimes commonly known as country bones, and kitchen bones, which are shipped from any point within any one of the following states: Arizona, Colorado, Idaho, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, Montana.

Prairie bones, however, shall not include dry packing house bones, or any fresh meat bones commonly known as green bones.

(b) On and after May 10, 1943, regardless of any contract or other obligation:

(1) No person shall sell or deliver prairie bones to industrial consumers at higher prices than the maximum prices set forth in this regulation.

(2) No industrial consumer shall buy or receive prairie bones in the course of

trade or business at higher prices than the maximum prices set forth in this regulation.

(3) No person shall agree, offer, solicit, or attempt to do any of the foregoing.

SEC. 2 *Maximum prices for prairie bones.*

(a) The maximum price for sales of prairie bones to industrial consumers shall be $31 per ton loaded on cars, trucks, or barges, at the seller's shipping point.

(b) The maximum prices established by this regulation shall not be increased by any charges for commissions or by any charges for the extension of credit.

SEC. 3 *Less than maximum prices.* Lower prices than those established by this regulation may be charged, demanded, offered or paid.

SEC. 4 *Adjustable pricing.* It is permissible under this regulation to provide in a contract that the price shall be adjustable to a price not higher than the maximum price in effect at the time of delivery. In appropriate situations where a petition for amendment requires extended consideration; the Price Administrator may, upon application, grant permission to agree to adjust prices upon deliveries made during the pendency of the petition in accordance with the disposition of the petition.

SEC. 5 *Applicability of other price regulations.* (a) The provisions of this regulation supersedes the provisions of the General Maximum Price Regulation [1] with respect to sales and deliveries for which maximum prices are established by this regulation.

(b) The maximum prices at which a person may export prairie bones shall be determined in accordance with the provisions of the Second Revised Maximum Export Price Regulation [2] issued by the Office of Price Administration.

SEC. 6 *Geographical applicability.* The provisions of this regulation shall be applicable to the forty-eight states of the United States and the District of Columbia.

SEC. 7 *Records and reports.* Every person making a sale or purchase of prairie bones after May 10, 1943, for which maximum prices are established by this regulation shall keep for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942 remains in effect complete and accurate records of each such sale or purchase showing: the date thereof, the name and address of the buyer or purchaser, the quantity sold or purchased, and the price charged.

(b) Persons affected by this regulation shall submit such reports to the Office of Price Administration as it may from time to time require.

SEC. 8 *Evasion.* The price limitations set forth in this regulation shall not be evaded whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale or delivery of, or relating to the sale of prairie bones alone or in connection with any other commodity, or by way of commission, service transportation, or other charge, or discount, premium or other privilege, or by tying-agreement or other trade understanding or otherwise.

SEC. 9 *Licensing and enforcement.* (a) The provisions of Supplementary Order No. 11 (§ 1305.15) [3] licensing distributors of chemicals and drugs, shall be applicable to every distributor of prairie bones for which maximum prices are established by this regulation. The term "distributor" shall have the meaning given it by such Supplementary Order No. 11.

(b) Persons violating any provision of this regulation are subject to the criminal penalties, civil enforcement actions, suits for treble damages and proceedings for suspension of licenses provided by the Emergency Price Control Act of 1942, as amended.

SEC. 10 *Definitions.* (a) When used in this regulation, the term:

"Seller's shipping point" means the point of distribution, from which the seller actually makes shipment.

"Industrial consumer" means any person who processes bones into bone char, bone black, bone handles, bone glue, bone meal or similar materials.

(b) Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942, as amended, shall apply to other terms used herein.

SEC. 11 *Petitions for amendment.* Any person seeking an amendment of any provision of this regulation may file a petition for amendment in accordance with the provisions of Revised Procedural Regulation No. 1.[4]

This regulation shall become effective May 10, 1943.

NOTE: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7357; Filed, May 10, 1943; 3:06 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Correction to Order 167 [5] Under § 1499.18 (b) of GMPR]

MC KESSON & ROBBINS, INC.

Correction to Order No. 167 under § 1499.18 (b) of the General Maximum Price Regulation; Docket No. GF 3-2924.

McKesson & Robbins, Inc., Potts Drug Division, Wichita, Kansas.

Section 1499.1063 (c) is corrected by changing the price "$1.65" in the form of notice to "$1.56".

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7359; Filed, May 10, 1943; 3:06 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 323 Under § 1499.3 (b) of GMPR, Amendment 1]

A. C. LAWRENCE LEATHER COMPANY

For the reasons set forth in an opinion in support of this amendment, issued simultaneously herewith and filed with the Division of the Federal Register, paragraph (a) of Order No. 323 is hereby amended to read as follows:

§ 1499.1764 *Establishment of maximum prices for chamois pockets, grade number three, manufactured by A. C. Lawrence Leather Company.* (a) On and after May 11, 1943, the maximum prices at which the A. C. Lawrence Leather Company of Peabody, Massachusetts, may sell and deliver its grade (3) three chamois pockets shall be:

Prices to Distributors

Sizes:	*Maximum prices (per dozen)*
12 x 14	$ 1.77
12 x 16	2.30
13 x 16	2.65
13 x 17	3.01
14 x 18	3.54
15 x 20	4.07
16 x 21	4.43
17 x 23	4.96
18 x 24	5.31
19 x 25	6.20
20 x 26	7.03
23 x 26	7.97
24 x 27	8.71
26 x 23	9.53
23 x 32	10.45

To the above distributor prices the A. C. Lawrence Leather Company may add its customary markups for sales to other classes of purchasers but in no event to exceed the following percentage markups:

Class of purchaser	*Percentage mark-up over distributor's prices*
(1) Sponge houses	5%
(2) Drug chains and large chain jobbers	10%
(3) Janitor supply and small chains	15%
(4) Retailers and large consumers	20%

This amendment to Order No. 323 shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7355; Filed, May 10, 1943; 3:07 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 453 Under § 1499.3 (b) of GMPR]

ROYCE CHEMICAL COMPANY

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1691 *Approval of maximum prices for Roycene, manufactured by Royce Chemical Company, Carlton Hill, N. J.*—(a) *Sales by Royce Chemical Company*—(1) *Maximum prices.* The maximum delivered prices for sales by

[1] 8 F.R. 3096, 3849, 4347, 4486, 4978, 4848.
[2] 8 F.R. 4132.
[3] 7 F.R. 6167, 11007.
[4] 7 F.R. 8961; 8 F.R. 3313, 3533.
[5] 8 F.R. 1034.

Royce Chemical Company of Roycene, are established as set forth below:

Roycene, 50%: 8¼¢ per pound.
Roycene, 75%: 11¼¢ per pound.

(b) This Order No. 453 may be revoked or amended by the Price Administrator at any time.

(c) This Order No. 453 (§ 1499.1691) shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7350; Filed, May 10, 1943; 3:03 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 454 Under § 1499.3 (b) of GMPR]

BOTANY WORSTED MILLS, INCORPORATED

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, *It is hereby ordered:*

§ 1499.1692 *Establishment of maximum prices for a fabric manufactured by the Botany Worsted Mills.* (a) On and after May 11, 1943, the maximum price at which the Botany Worsted Mills of Passaic, New Jersey may sell and deliver its fabric, style number 19811/1, as described hereinbelow, shall be:

Style No. and description	*Maximum price (per yard)*
19811/1 Specialty polishing cloth; 57 inches in width; 15 ounces per yard in weight; 131 ends and 129 picks; 2/162's yarn count	$7.50

(b) The above maximum price shall be subject to discounts, terms and allowances no less favorable to the purchaser than those in effect during March 1942 on sales of woolen fabrics.

(c) This Order No. 454 may be revoked or amended by the Price Administrator at any time.

This Order No. 454 (§ 1499.1692) shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7359; Filed, May 10, 1943; 3:07 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 455 Under § 1499.3 (b) of GMPR]

MINNESOTA MINING AND MANUFACTURING CO.

For reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1693 *Approval of maximum prices for 3-M Waterproof Concentrated Floor Wax.* (a) Minnesota Mining and Manufacturing Company of Saint Paul, Minnesota may sell and deliver and any purchaser may buy and receive 3-M Waterproof Concentrated Floor Wax at $1.34 per gallon.

(b) All discounts, allowances, trade practices, and practices relating to the payment of shipping charges in effect during March 1942, on sales by Minnesota Mining and Manufacturing Company of comparable products, shall apply to the maximum price determined under paragraph (a).

(c) This Order No. 455 may be revoked or amended by the Price Administrator at any time.

This order shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7360; Filed, May 10, 1943; 3:06 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 456 Under § 1499.3 (b) of GMPR]

STANDARD OIL COMPANY OF CALIFORNIA

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

§ 1499.1694 *Approval of maximum prices for sales of weak sulfuric acid by Standard Oil Company of California.* (a) The Standard Oil Company of California, having its principal offices at San Francisco, California, may sell and deliver weak sulfuric acid containing approximately 48% H_2SO_4 and 2 to 3 percent hydrocarbons at prices not in excess of $7.35 per ton (100% H_2SO_4 basis) in tank cars, f. o. b. Richmond, California.

(b) All prayers of the applicant not granted herein are denied.

(c) This Order No. 456 may be revoked or amended by the Price Administrator at any time.

This order shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7351; Filed, May 10, 1943; 3:09 p. m.]

PART 1305—ADMINISTRATION

[Gen. RO 5,[1] Amendment 20]

FOOD RATIONING FOR INSTITUTIONAL USERS

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.*

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 2195, 2348, 2598, 2666, 2667, 3178, 3216, 3255, 3616, 3851, 4325, 4131, 4784, 4785, 4839, 5341, 5265, 5476, 5485.

General Ration Order No. 5 is amended in the following respects:

1. A new Article XXVIII containing sections 281 to 28.8 inclusive, is added to read as follows:

Article XXVIII—Home Processing by Institutional Users

SEC. 28.1 *Explanation of terms "home processed foods" and "kitchen".*—(a) *Home processed foods.* Processed foods which are produced in a "kitchen" are "home processed foods."

(b) *Kitchen.* A "kitchen" is a place principally used for the preparation of meals, or for the demonstration of such preparation (such as a kitchen in a school or in a home economics center).

SEC. 28.2 *Group I institutional users use and transfer home processed foods in accordance with Ration Order 13.* (a) A person who is a Group I institutional user may use and transfer home processed foods he produces, in the manner provided for ordinary consumers by Ration Order 13.

SEC. 28.3 *Group II and III institutional users must report amount of home processed foods they produce and are charged with excess inventory*—(a) *Group II or III institutional users must report amount they produce.* A Group II or III institutional user who produces home processed foods during any month, must report to the board, on or before the tenth day of the following month, the total amount of such foods he produced.

(b) *He is charged with an excess inventory of processed foods.* The board shall charge him with an excess inventory of processed foods equal to the point value of the home processed foods he produced. (The point value of home processed foods is fixed by Revised Supplement No. 1 to Ration Order 13.) This excess inventory charge may be apportioned, at his request, over a period of time not exceeding one year from the date of such report.

(c) *Such excess inventory may be charged to his separately registered Group II and III establishments.* If he operates separately registered Group II or III establishments, he may have this excess inventory charged against those establishments in such proportions as he chooses.

(d) *Home processed foods he uses are regarded as part of his allotment.* For the purposes of section 15.2 of this Order, home processed foods used by a Group II or III institutional user are to be included, (at their point value), in determining the amount of processed foods he used during an allotment period.

SEC. 28.4 *A Group II or III institutional user may transfer home processed foods he produces*—(a) *He may transfer them only for points.* A Group II or III institutional user may sell or transfer home processed foods produced by him only if he gets from the transferee points equal to the point value of the foods he transfers. He need not give up points for a movement of such foods to his Group II or III establishment which was charged with an excess inventory under section 28.3 (b) or (c) for the production of such foods, or to any of his other

establishments which are in the same group and registered together with such establishment. A movement of such foods to another of his Group II or III establishments which is registered separately is to be treated as a transfer to another person.

(b) *He must keep records and surrender points to the board.* For this purpose, he need not register as a processor or make reports, but must keep a record of any transfer he makes, showing the amount and date of the transfer, and the name and address of the person to whom the transfer is made. If he makes any transfers of home processed foods for points during any month, he must give up the points to the board, on or before the tenth day of the next month.

(c) *The excess inventory charges against him shall be credited with the points surrendered.* The excess inventory charged against him under section 28.3 (b) or (c) shall be credited with the number of points he surrenders to the board pursuant to the last paragraph.

SEC. 28.5 *Institutional users producing processed foods in place other than a "kitchen" may get permission to treat them as home processed foods.* (a) In some cases, an institutional user may produce processed foods in a place not used principally for the preparation of meals or for the demonstration of such preparation (and hence not a kitchen as defined in section 28.1). Yet the facilities he uses may not differ substantially from the facilities ordinarily found in a "kitchen" and may clearly not be commercial-scale processing facilities. For example, a state prison may have on its premises, in addition to its "kitchen", a separate place containing facilities used for processing foods, which are of a type similar to those normally used by such institutions in kitchens. An institutional user who has such a place and facilities may apply to the board in writing for permission to treat the processed foods produced there as "home processed foods". He shall describe the facilities he intends to use, the purposes for which those facilities are ordinarily used, the total amount of processed foods he expects to produce there, and the disposition to be made of such processed foods.

(b) If the board finds that the facilities used are clearly not commercial-scale processing facilities, and do not differ substantially from those normally used by such institutional users in kitchens, it shall notify the applicant that the foods so produced may be treated as home processed foods. The applicant may then use and transfer them as permitted by sections 28.2, 28.3 and 28.4 of this order.

SEC. 28.6 *A Group I institutional user obtains sugar for producing home processed foods in accordance with sugar regulations.* (a) A person who is a Group I institutional user who wishes to get a sugar allowance for the purpose of acquiring sugar with which to produce home processed foods from fresh fruits, and for making jams, jellies, preserves or fruit butters applies in the same manner as any other person who is registered as a consumer, pursuant to §§ 1407.71 and 1407.71a of Rationing Order No. 3. For this purpose, the War Ration Books One of persons eating at his establishment may be pooled.

SEC. 28.7 *A Group II or III institutional user may obtain a sugar allotment for producing home processed foods from fresh fruits*—(a) *He must apply to the board on OPA Form R-315.* A Group II or III institutional user may obtain an allotment of sugar to be used in producing home processed foods from fresh fruits, for use or transfer pursuant to sections 28.3 and 28.4 of this order. He must make application for such allotment to the board on OPA Form R-315, stating the name and address of the place at which the home processed foods are to be produced, the amount of sugar needed, the amounts of home processed foods to be produced with such sugar, the type of facilities to be used in producing such foods, and the disposition to be made of such foods.

(b) *He may get an allotment of sugar.* The board may grant an allotment of sugar in an amount not exceeding one (1) pound of sugar for each four (4) quarts of home processed foods to be produced from fresh fruits. It shall issue a certificate for the amount of the allotment. However, if the applicant has an excess inventory of sugar, the amount thereof shall be deducted from the amount for which the certificate is to be issued. Any excess inventory so deducted shall be cancelled.

SEC. 28.8 *Special provisions for processed foods produced by government agency in commercial-scale processing facilities*—(a) *It must report amount produced.* In some cases, a government or government agency which operates one or more Group II establishments or eleemosynary Group III establishments, may produce processed foods in commercial-scale processing facilities, primarily for use in the preparation and service of food in such establishments. A government or agency which so produces processed foods in any month, must report to the board, on or before the tenth day of the following month, the total amount of such processed foods it produced.

(b) *It is charged with an excess inventory of processed foods.* The government or government agency shall be charged with an excess inventory of processed foods at a rate of four (4) points for each pound of such processed foods so produced. This excess inventory charge may be apportioned, at its request, over a period of time not exceeding one year from the date of the report required by paragraph (a) of this section. If it operates separately registered Group II or eleemosynary Group III establishments, it may have this excess inventory charged against those establishments in such proportions as it choses.

(c) *It may obtain sugar allotment to produce such processed foods.* The government agency may obtain an allotment of not more than one (1) pound of sugar for each eight (8) pounds of such processed foods to be so produced from fresh fruits. Application for the allotment must be made on OPA Form R-315. The application must show:

(1) The name and address of the applicant;

(2) The location of the facilities to be used;

(3) The amount of sugar requested;

(4) The number of pounds of processed foods to be produced with such sugar; and

(5) The disposition to be made of such processed foods.

(d) *It uses such processed foods as part of its allotment.* For the purposes of section 15.2 of this Order, the point value of such processed foods used by such government or government agency at its Group II and eleemosynary Group III establishments is to be included at the rate of four (4) points per pound, in determining the amount of processed foods used during an allotment period.

(e) *It may transfer such foods to similar establishments at reduced point value.* It may sell or transfer such processed foods to other Group II or eleemosynary Group III institutional user establishments operated by a government or government agency, or to the Lend-Lease Administration, at the rate of four (4) points per pound. A transfer to a separately registered establishment operated by it, which was not charged with an excess inventory of processed foods pursuant to paragraph (b) of this section for the production of the foods transferred, is treated just as if it were a transfer to another establishment of the same type operated by a different person, and may be made only for points. (However, no points need be given up for a movement of such foods to a Group II or eleemosynary Group III establishment operated by it, which was charged with an excess inventory, pursuant to paragraph (b) of this section, for the production of the foods transferred, or which is in the same group and registered together with such an establishment.)

(f) *It must keep records and surrender points to the board.* For this purpose, it need not register as a processor or make reports, but it must keep records of the amounts of such foods transferred and the names and addresses of the persons to whom transfers are made. It must surrender to the board, on or before the tenth day of each month, all points received for such transfers during the preceding month. The excess inventory of processed foods charged pursuant to paragraph (b) of this section, shall be credited with the number of points surrendered pursuant to this paragraph.

(g) *Any other transfers must be at full point value.* Transfers to any person or establishment other than those mentioned in paragraph (e) may be made only at the regular point value of such processed foods, as fixed by Revised Supplement No. 1 to Ration Order 13. If the government or government agency makes such transfers, it must register as a processor as to all its transfers, and must file reports as required by section 3.2 of that order.

This amendment shall become effective May 15, 1943.

NOTE: All reporting and record-keeping requirements of this amendment have been approved by the Bureau of the Budget in

accordance with the Federal Reports Act of 1942.

(Pub. Law 671, 76th Cong.; as amended by Pub. Laws 89, 421 and 507, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; W.P.B. Dir. 1, Supp. Dir. 1-E, 1-M, and 1-R, 7 F.R. 562, 2965, 7234, 9684, respectively; Food Dir. 3, 5, 6, and 7, 8 F.R. 2005, 2251, 3471, respectively)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7387; Filed, May 10, 1943; 4:50 p. m.]

PART 1340—FUEL

[MPR 137,[1] Amendment 33]

PETROLEUM PRODUCTS SOLD AT RETAIL

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Section 1340.91 (g) (2) is amended to read as follows:

(2) In addition to the maximum price as determined by § 1340.91 (a) (1) and (2) sellers of petroleum products at retail establishments in the Territory of Puerto Rico may charge, from and after March 5, 1943, to a purchaser included in subsection 4, entitled "Other Excises * * *", of Act 25 enacted by the Legislature of Puerto Rico and approved December 4, 1942, the amount of the 3% tax therein imposed and 3½¢ per gallon to cover the tax increase on lubricating oil imposed by such Act, except that the total amount charged on each lot shall be adjusted to the nearest cent.

This amendment shall become effective May 10, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7375; Filed, May 10, 1943; 4:48 p. m.]

PART 1340—FUEL

[RPS 88,[2] Amendment 96]

PETROLEUM AND PETROLEUM PRODUCTS

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Section 1340.164 (a) (2) is amended to read as follows:

(2) *Puerto Rican taxes.* Effective March 5, 1943, each seller in the Territory of Puerto Rico subject to this Revised Price Schedule No. 88 may collect in addition to his maximum price for any petroleum product which is subject to Act No. 25 enacted by the Legislature of Puerto Rico and approved December 4, 1942 the amount of the 3½ cents per gallon increase in the tax on lubricating oil effected by the said Act, the 3% tax imposed by Subsection 4, entitled "Other Excises . . .", of said Act and the amount of subsequent increases in the tax on any petroleum product actually paid by him or an amount equal to the amount of such increase or increases paid by any prior vendor and separately stated and collected from the seller by the vendor from whom he purchased, provided the seller states the amount of such increase or increases separately from the purchase price.

This amendment shall become effective May 10, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7376; Filed, May 10, 1943; 4:48 p. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[Rev. MPR 237]

FIXED MARK-UP REGULATION FOR SALES OF CERTAIN FOOD PRODUCTS AT WHOLESALE

Maximum Price Regulation No. 237[1] is redesignated Revised Maximum Price Regulation No. 237 and is amended to read as follows:

A statement of the considerations involved in the issuance of this Revised Maximum Price Regulation No. 237 has been issued simultaneously herewith and filed with the Division of the Federal Register.*

In the judgment of the Price Administrator, the maximum prices established by this maximum price regulation are and will be generally fair and equitable and comply with the requirements of the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, and Executive Order No. 9328, and will effectuate the purposes of said Act and Executive Orders.

§ 1351.501 *Fixed mark-up regulation for sales of certain food products at wholesale.* Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, and Executive Order No. 9328, Revised Maximum Price Regulation No. 237, which is annexed hereto and made a part hereof, is hereby issued.

AUTHORITY: § 1351.501 issued under Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7371; E.O. 9328, 8 F.R. 4681.

REVISED MAXIMUM PRICE REGULATION 237—FIXED MARK-UP REGULATION FOR SALES OF CERTAIN FOOD PRODUCTS AT WHOLESALE

ARTICLE I—GENERAL PROVISIONS

Sec.

ARTICLE II—SPECIAL PRICING PROVISIONS

ARTICLE III—MISCELLANEOUS PROVISIONS

Article I—General Provisions

SECTION 1 *Applicability of this Revised Maximum Price Regulation No. 237*—(a) *What commodities may be priced under this regulation.* This regulation applies only to the particular food products listed in Appendix A of this regulation.

(b) *To what types of sellers this regulation applies.* This regulation applies only to sellers at wholesale (hereinafter referred to as wholesalers), which for the purpose of this regulation are divided into the following three classes:

(1) *Class 1: Retailer-owned cooperative wholesaler.* A retailer-owned cooperative wholesaler is either a non-profit organization or a corporation, 51% of the stock of which is owned by its re-

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 4092, 4511, 4335, 5588.

[2] 8 F.R. 3718, 3795, 3845, 3841, 4130, 4131, 4252, 4334, 4783, 4918, 4844.

[1] 7 F.R. 8205, 8427, 8808, 9183, 9973, 10013, 10715; 8 F.R. 373, 569, 1200, 2106, 2671, 3946, 5266.

tailer customers, and which distributes food products for resale without materially changing their form.

(2) *Class 2: Cash-and-carry wholesaler.* A cash-and-carry wholesaler is a wholesaler not in Class 1 who customarily distributes food products for resale by independent retail stores or to commercial, industrial, or institutional users without materially changing their form and who does not customarily deliver or extend credit to retail buyers.

(3) *Class 3: Service wholesaler.* A service wholesaler is a wholesaler not in Class 1 who customarily distributes food products for resale by independent retail stores or to commercial, industrial, or institutional users without materially changing their form and who customarily delivers, or delivers and extends credit.

(c) *Purpose of this regulation.* This regulation provides new maximum prices for the particular food products listed in Appendix A. These new maximum prices are to be the only maximum prices for all sales of such food products after the effective date of this regulation and are to be used instead of the maximum prices calculated under any other price regulation or order issued by the Office of Price Administration.

(d) *Prohibition.* On and after May 10, 1943 regardless of any contract or obligation, no person is permitted to sell or deliver at wholesale any of the food products listed in Appendix A at a price which is higher than the maximum price fixed by this regulation, and no person is permitted to buy or receive any of these food products in the course of trade or business at a price higher than that maximum price. Lower prices than the maximum prices may be charged and paid.

SEC. 2 *Exempt wholesalers.* This regulation shall not apply to wagon-wholesalers. A wagon-wholesaler is a wholesaler who distributes food products from an inventory stocked in trucks or conveyances, to independent retail outlets or to commercial, industrial, and institutional users. Such conveyances must be under the supervision of driver-salesmen who make delivery at the time and point of sale. This wholesaler is a wagon-wholesaler only for the food he sells in this way.

SEC. 3 *How a wholesaler calculates his maximum prices for food products listed in Appendix A.* (a) A wholesaler must calculate his maximum price for each item (that is, for each kind, brand, grade, variety, container type and container size) of a food product listed in Appendix A as follows:

(1) A wholesaler should first find from section 1 (b) in what class of wholesaler he falls under this regulation.

(2) A wholesaler will next find his net cost of the item he is pricing. "Net cost" in this regulation means the amount he paid for an item delivered at his customary receiving point less all discounts allowed him except the discount for prompt payment; however, no charge or cost for local unloading or local trucking shall ever be included. "Net cost" shall be based on the wholesaler's most recent purchase of a customary quantity from a customary supplier and on the customary mode of transportation.

(3) A wholesaler will then multiply his "net cost" by the figure in Appendix A which applies to a wholesaler of his class for the item being priced.

(4) The resulting amount shall be the wholesaler's maximum price for the particular item, but before making any sales at this new price, he must fill out Form No. 337:1 (or copy thereof) as set forth in Appendix B of this regulation.

SEC. 4 *How a wholesaler may recalculate a new maximum price if his "net cost" increases before the final date for calculating a maximum price.* If, after calculating any maximum price and after filling out Form No. 337:1 (or copy thereof), a wholesaler, before the final date set opposite the name of the food product in Appendix A for the calculation of a maximum price, purchases a customary quantity of the same item from a customary supplier at a higher "net cost" than he used in calculating his maximum price, he may calculate a new maximum price on the basis of his new "net cost." Before making any sales at this new price, he must fill out Form No. 337:1 (or copy thereof) as set forth in Appendix B of this regulation. The facts recorded on Form No. 337:1 (or a copy thereof) for the first new maximum price must not be changed, and a wholesaler should note on the form that a new maximum price has been calculated.

SEC. 5 *Final dates for calculating and filing maximum prices*—(a) *Calculating and recording maximum prices.* A wholesaler must calculate and record on Form No. 337:1 (or a copy thereof) as set forth in Appendix B of this regulation all new maximum prices for any item of a food product on or before the date set opposite the name of that food product in Appendix A.

(b) *Filing of maximum prices.* Within ten days after the final date for the calculation of a maximum price for a food product under this regulation, a wholesaler must report all his new maximum prices to the nearest district office of the Office of Price Administration on Form No. 337:1 (or a copy thereof) as set forth in Appendix B of this regulation.

SEC. 6 *How a wholesaler calculates maximum prices for "new items."* When a wholesaler receives delivery of an item of a food product listed in Appendix A after the final date provided for him in this regulation for calculating maximum prices for items of that food product and for which he has not calculated a maximum price under this regulation, he shall consider that item a "new item," and must, before making any sales of it, calculate and record his maximum price in accordance with the provisions of section 3, except that he shall calculate his maximum price based on the "net cost" of his first purchase of that item. This maximum price cannot be changed and may not be recalculated under the provisions of section 4.

SEC. 7 *Maximum prices set under this regulation cannot be changed.* A maximum price for any item of a food product calculated under this regulation by a wholesaler and entered on Form No. 337:1 (or a copy thereof) shall be his maximum price for that item from that time forward. However, where a wholesaler recalculates a maximum price under section 4 of this regulation, such recalculated price shall be his maximum price for that item from and after the date that the recalculated price is entered on Form No. 337:1 (or a copy thereof).

SEC. 8 *Fractions of cents.* Any maximum price calculated under this regulation shall be based on the wholesaler's customary unit of sale, that is, per case, per box, per bag, per dozen or the like. All such calculations resulting in a fraction of a cent shall be reduced to the nearest lower cent if the fraction is less than one-half cent and shall be increased to the nearest higher cent if the fraction is one-half cent or more.

SEC. 9 *Records.* (a) On the same day as a wholesaler calculates any new maximum price under this regulation and fills out Form No. 337:1 (or a copy thereof) he shall record on his base-period record required in § 1499.11 of the General Maximum Price Regulation,[2] that new maximum price. The record of the old maximum price shall not be destroyed.

(b) In addition to the records required in § 1499.11 of the General Maximum Price Regulation or any other applicable price regulation, every wholesaler shall keep a copy of all Forms No. 337:1 which are filed in accordance with section 5 hereof and all records showing how he calculated any maximum price under this regulation, which records shall be kept and made available for examination by the Office of Price Administration wherever the commodities are sold for so long as the Emergency Price Control Act of 1942, as amended, remains in effect.

SEC. 10 *Licensing and registration.* The licensing and registration provisions of sections 15 and 16 of the General Maximum Price Regulation shall apply to every person making sales subject to this regulation. Sections 15 and 16 provide, in brief, that a license is required of all persons selling at wholesale commodities for which maximum prices are established. A license is automatically granted. It is not necessary to apply for the license, but all sellers may later be required to register. The license may be suspended for violations in connection with the sale of any commodity for which maximum prices are established. No person whose license is suspended may sell any such commodity during the period of suspension.

SEC. 11 *Evasion.* The price limitations set forth in this regulation shall not be evaded, whether by direct or indirect methods, in connection with any offer, solicitation, agreement, sale, delivery, purchase or receipt of, or relating to, any of the commodities listed in Appendix A hereof, alone or in conjunction with any other commodity or by way of commission, service, transportation, or any other charge, or discount, premium or other privilege, or by tying-agreement or other trade understanding, or by cal-

[2] 8 F.R. 3036, 3949, 4347, 4486, 4724, 4973, 4948.

culating "net cost" on purchases from non-customary suppliers, purchases of non-customary quantities or purchases on non-customary modes of transportation, or otherwise.

SEC. 12 *Enforcement.* Persons violating any provisions of this regulation are subject to the criminal penalties, civil enforcement actions, suits for treble damages and proceedings for suspension of licenses provided by the Emergency Price Control Act of 1942, as amended.

SEC. 13 *Community prices.* From time to time the Office of Price Administration may, by order, fix community (dollars-and-cents) maximum prices for some or all of the food products covered by this regulation.

These orders will specify the locality and classes of wholesalers for which the community prices will replace maximum prices figured under this regulation. Where the orders do not specify the class and locality of any particular wholesaler, he shall continue to calculate his maximum prices under this regulation.

Article II—Special Pricing Provisions

SEC. 14 *Addition allowed wholesalers in special cases*—(a) *Addition allowed for packaging certain food products purchased in bulk.* A wholesaler who purchases any item of rice, dried fruit or dry edible beans in bulk and then packages and sells such food product in sealed transparent bags or sealed packages may add to his maximum price calculated under this regulation for his customary unit of sale of such packaged item whichever of the following amounts is applicable:

(1) One cent for each of such packages or bags with a net weight of less than 2 pounds contained in his customary unit of sale.

(2) Two cents for each of such packages or bags with a net weight of 2 pounds or more contained in his customary unit of sale.

(3) The resulting amount shall be the wholesaler's new maximum price for such packaged item.

SEC. 15 *Purchases and sales between wholesalers.* If a wholesaler purchases from another wholesaler covered by this regulation an item for which the purchasing wholesaler has already calculated a maximum price under this regulation, he must not use the price he pays for such an item in figuring his "net cost." He must continue to use his own maximum price.

If a wholesaler purchases from another wholesaler covered by this regulation an item for which the purchasing wholesaler has not previously been required to calculate a maximum price under this regulation, he must secure a written record of the other wholesaler's "net cost." He will add to that "net cost" the mark-up allowed to his class of wholesaler and the resulting figure will be his maximum price.

SEC. 16 *How a wholesaler figures his maximum prices for foods he "manufactures or otherwise processes."* If a wholesaler "manufactures or otherwise processes" and sells at wholesale any item covered by this regulation, he must figure his "net cost" or maximum price for such item under which ever of the following provisions applies:

(a) If the item is one for which the Office of Price Administration has issued, or later issues, a regulation naming dollars-and-cents maximum prices for sales by manufacturers, but the regulation makes no provision for manufacturers selling at wholesale, the lowest maximum price under that regulation for sales delivered to the wholesaler's customary receiving point shall be his "net cost".

(b) If the item is one for which the Office of Price Administration has issued, or later issued, a regulation naming dollars-and-cents maximum prices for sales by manufacturers at wholesale, the wholesaler will use the maximum price fixed in that regulation for sales at wholesale as his maximum price. He will not attempt to figure a "net cost" and apply a mark-up under this regulation.

(c) If the item is one for which the Office of Price Administration has not issued, or does not later issue, a regulation establishing dollars-and-cents maximum prices for sales by manufacturers, the wholesaler shall figure his maximum price for such item as a manufacturer under the appropriate regulation covering sales of such item by manufacturers. He will not attempt to figure a "net cost" and apply a mark-up under this regulation.

(d) "Manufacture or otherwise process" shall mean blending, freezing, canning, preserving, milling, crushing, straining, roasting, centrifuging, cooking, distilling, purifying with heat, and other similar operations. For the purpose of this regulation a wholesaler shall be considered a manufacturer of an item which he "manufactures or otherwise processes" directly, or which is manufactured by a person to whom he supplies the raw material.

SEC. 17 *How a retailer-owned cooperative wholesaler calculates maximum prices for sales to non-members.* A retailer-owned cooperative wholesaler (Class 1) who has customarily sold to non-members (those customers who have no share or interest in its ownership) may be considered either a Class 2 or Class 3 wholesaler in calculating maximum prices for such sales. Such retailer-owned cooperative wholesaler shall determine into which of these two classes it falls on the basis of its operations in connection with its total sales to non-members.

SEC. 18 *How a service wholesaler calculates his maximum price when he makes cash-and-carry sales.* Where a service wholesaler (Class 3) makes cash-and-carry sales (Class 2) and has customarily maintained a price differential between cash-and-carry sales and his service sales, he must use for the cash-and-carry sales the figure in Appendix A which applies to a cash-and-carry wholesaler (Class 2).

SEC. 19 *Addition allowed for delivery by a retailer-owned cooperative wholesaler or a cash-and-carry wholesaler.* (a) A retailer-owned cooperative wholesaler (Class 1) or a cash-and-carry wholesaler (Class 2), who has customarily added a set amount or percentage to his sales price for delivering to retail buyers, may continue to add such amount or percentage to his total sales price of those sales which he delivers to his retail buyers. Such amount or percentage must be shown on the wholesaler's invoice.

(b) A retailer-owned cooperative wholesaler (Class 1) or a cash-and-carry wholesaler (Class 2), who has not customarily added a set amount or percentage to his sales price for delivering to retail buyers, may add one per cent (1%) of the total amount of a sale of the food products covered by this regulation, to his total sales price of those sales which he delivers to his retail buyers. Such percentage must be shown on the wholesaler's invoice.

SEC. 20 *Addition allowed service wholesalers for deliveries outside of a base zone.* (a) A service wholesaler who during March 1942 customarily (1) charged different delivered prices for the same food products because of the areas or zones in which the deliveries were made; and (2) determined his delivered prices for each of these areas or zones by adding to the delivered prices established for retailers situated in some base area or zone, an amount approximately equal to the difference between the average cost of delivery to the retailers in the base area or zone and the average cost of delivery to the retailers in such other areas or zones, may continue to receive such amounts in addition to his maximum prices, but such amounts (hereinafter called zone differentials) must be separately stated on the wholesaler's invoices.

(b) Before using such a zone differential, a service wholesaler must report it to the nearest district office of the Office of Price Administration, together with proof showing its customary use by him during March 1942.

(c) The Office of Price Administration reserves the right to adjust at any time any such zone differential permitted under this section.

SEC. 21 *Adjustment of maximum prices for different classes of purchasers.* If a wholesaler had a practice during March 1942 of giving to different classes of purchasers allowances, discounts or other price differentials, he is required to reduce his maximum price calculated for any food product by the amount of such allowances, discounts or price differentials, except as otherwise provided in section 20. No wholesaler shall change his customary allowances, discounts and price differentials if the change results in a higher net price.

SEC. 22 *Taxes.* Any tax upon or incident to a sale at wholesale of food covered by this regulation, which the statute or ordinance imposing the tax does not prohibit the seller from stating and collecting separately from the selling price, may be collected by a wholesaler in addition to his maximum price if he states the tax separately.

SEC. 23 *Special pricing provision for manufacturers selling some commodities at wholesale.* Any person the larger part of whose business consists of the manufacturing or processing of foods

but (a) his entire business in connection with a particular commodity consists of the purchase and resale of such commodity without substantially changing its form and (b) the larger part of his sales of such commodity are made to independent retail stores or to commercial, industrial or institutional users, (c) may calculate his maximum price for such sales of that commodity under this regulation.

Article III—Miscellaneous Provisions

SEC. 24 *Transfer of business and stock in trade.* If, after May 10, 1943 a person acquires in any way the business, assets and stock in trade of any wholesaler covered by this regulation and carries on the business, or continues to deal in the same type of food products in the same establishment, and renders the same service and sells to the same class of purchaser, his maximum prices shall be the same as those of the former owner if no transfer had taken place. The new owner must keep all the records needed to verify his maximum prices. The former owner must either preserve and make available to the new owner or give him all the records of his transactions before the new owner acquired the establishment which the new owner may need to comply with the record provisions of this regulation.

If, after the transfer, the new owner falls into a class of wholesaler different from the former owner's, the new owner's maximum prices shall be those for the class of wholesaler in which he falls. (For example: If a person acquires the business, assets, and stock in trade of a service wholesaler and decides to discontinue making deliveries, his maximum prices must be figured as a cash-and-carry wholesaler, using as his "net cost" the same "net cost" the former owner used in establishing his maximum prices.)

SEC. 25 *Export sales.* The maximum prices at which a person may export any product covered by this regulation shall be determined in accordance with the Second Revised Maximum Export Price Regulation [3] and amendments, issued by the Office of Price Administration.

SEC. 26 *Relation between this regulation and the General Maximum Price Regulation.* The provisions of this regulation supersede the provisions of the General Maximum Price Regulation and any other applicable price regulation or order issued by the Office of Price Administration with respect to sales and deliveries for which maximum prices are established by this regulation. However, the following sections of the General Maximum Price Regulation shall continue to be applicable to every wholesaler selling any food product listed in Appendix A:

(a) Base-period records (§1499.11).

(b) Current records (§1499.12).

(c) Sales slips and receipts (§1499.14).

SEC. 27 *Definitions.* (a) Unless the context or definitions hereinafter set forth otherwise require, the definitions set forth in section 302 of the Emergency Price Control Act of 1942, and in §§1499.2 and 1499.20 of the General Maximum Price Regulation shall apply to terms used herein.

(b) An "independent retail store" shall mean one that is not a unit of four or more retail stores under one ownership.

SEC. 28 *Geographical applicability.* The provisions of this regulation shall apply to the 48 states of the United States and the District of Columbia.

APPENDIX A

(A) FIGURES TO BE USED BY WHOLESALERS IN DETERMINING NEW MAXIMUM PRICES UNDER THIS REGULATION; NEW MAXIMUM PRICES ARE REQUIRED AFTER THE EFFECTIVE DATE OF THIS REGULATION

Food product [1]	Last date for determining new maximum price under this regulation	Last date for filing new maximum prices with appropriate OPA district office	Figures to be multiplied by "net cost" of item in determining new maximum prices under this regulation		
			Class 1 Retailer-owned cooperatives	Class 2 Cash and carry	Class 3 Service
1. Fruit, dried	May 3, 1943	May 13, 1943	1.075	1.125	1.185
2. Lard	May 3, 1943	May 13, 1943	1.025	1.025	1.075
3. Dry edible beans	May 3, 1943	May 13, 1943	1.08	1.09	1.12
4. Coffee	May 3, 1943	May 13, 1943	1.075	1.075	1.09
5. Fish, processed	May 3, 1943	May 13, 1943	1.075	1.13	1.19
6. Oils, cooking and salad	May 3, 1943	May 13, 1943	1.07	1.075	1.10
7. Shortening, hydrogenated	May 3, 1943	May 13, 1943	1.045	1.055	1.05
8. Shortening, other	May 3, 1943	May 13, 1943	1.045	1.055	1.06
9. Corn meal	May 3, 1943	May 13, 1943	1.09	1.095	1.13
10. Canned citrus fruits and juices	May 3, 1943	May 13, 1943	1.105	1.115	1.13
11. Evaporated and condensed milk	May 3, 1943	May 13, 1943	1.035	1.035	1.045
12. Syrups	May 3, 1943	May 13, 1943	1.07	1.10	1.115
13. Flour and flour mixes	May 3, 1943	May 13, 1943	1.07	1.075	1.10
14. Macaroni and noodle products	May 3, 1943	May 13, 1943	1.09	1.115	1.15
15. Peanut butter	May 3, 1943	May 13, 1943	1.115	1.14	1.17
16. Vinegar	May 3, 1943	May 13, 1943	1.12	1.16	1.22
17. Honey	May 3, 1943	May 13, 1943	1.115	1.14	1.19
18. Baby foods	June 8, 1943	June 18, 1943	1.07	1.14	1.20
19. Cereals, breakfast	June 8, 1943	June 18, 1943	1.075	1.09	1.03
20. Fruits, berries, and fruit juices, canned	June 8, 1943	June 18, 1943	1.135	1.155	1.18
21. Fruits, quick frozen	June 8, 1943	June 18, 1943	1.23	1.24	1.24
22. Jams, jellies, and preserves	June 8, 1943	June 18, 1943	1.115	1.14	1.17
23. Pickles and relishes	June 8, 1943	June 18, 1943	1.09	1.11	1.14
24. Rice	June 8, 1943	June 18, 1943	1.04	1.055	1.03
25. Sugar	June 8, 1943	June 18, 1943	1.02	1.02	1.04
26. Vegetables and vegetable juices, canned	June 8, 1943	June 18, 1943	1.07	1.14	1.20
27. Vegetables, quick frozen	June 8, 1943	June 18, 1943	1.24	1.24	1.24

[1] As described in "Definitions of Food Products" below.

(b) *Example of how to compute new maximum prices.* A wholesaler must calculate a new maximum price on bulk, choice, Blenheim apricots for which he paid $5.78 delivered. This wholesaler is a cash and carry wholesaler. Therefore, he takes the dried fruit figure for his class (cash and carry—1.125), and multiplies it by the cost of $5.78 per 25-lb. box which includes his f.o.b. invoice cost and his freight payment. The resulting figure of $6.50250 will be his new ceiling per box. This figure will be rounded to $6.50.

Invoice cost one 25-lb. box	($0.213 per lb. | per box)	$5.42
Freight			.36
Total warehouse del. cost (excluding local trucking charges)			$5.78
Multiplied by adjustment figure			1.125
			2890
			1156
			578
			578
New ceiling			$6.50250

Since the fractional part of a cent is less than one half cent the wholesaler's permitted ceiling is $6.50, under section 8 of this regulation which provides that fractions of less than one half cent shall be adjusted to the next lower cent. Fractions equal to one half cent or more shall be rounded to the next higher cent.

(c) *Definition of food products on which wholesalers must determine new maximum prices under this regulation.* (1) "Fruit, dried" shall mean dried apples, apricots, currants, nectarines, peaches, pears, prunes, raisins and any combination of the above, packaged or bulk. Stuffed or glaced dried fruit and figs shall be excluded.

(2) "Lard" shall mean all pure packaged or bulk lard derived wholly from pork.

(3) "Dry edible beans" shall mean all threshed and dried field or garden beans used for human consumption.

(4) "Coffee" shall mean roasted coffee, either whole or ground; decaffeinated coffee; coffee concentrates; chicory; coffee compounds consisting of a blend of coffee and any other product; cereals, beans, peas, and other products and concentrates thereof designated as or intended for use as, coffee substitutes or coffee extenders.

(5) "Fish, processed" shall mean all canned fish and seafood and all salted, pickled, dried or otherwise processed fish except smoked fish and smoked seafood not canned; excluded are all fresh or frozen fish and seafood.

(6) "Oils, cooking and salad" shall mean all vegetable, fruit and leaf plant oils, whether pure or mixed; but shall not include prepared dressings or pure olive oil.

(7) "Shortening, hydrogenated" shall include all fully hydrogenated pure vegetable shortenings, such as Bakerite, Crisco, Dexo, Envoy, Royal Satin, Spry and Tex.

(8) "Shortening, other" shall include all shortenings except those included in (7) above, and except pure lard.

(9) "Corn meal" shall mean all corn meal in package or bulk sold for human consumption.

(10) "Canned citrus fruits and juices" shall mean all canned fruits and juices in hermetically sealed containers made from fresh citrus fruits including, but not limited to, oranges, lemons, limes, grapefruit and tangerines.

[3] 8 F.R. 4132.

(11) "Evaporated and condensed milk" shall mean all evaporated, concentrated or condensed milk in hermetically sealed containers and also powdered whole or skim milk packaged for the ultimate consumer.

(12) "Syrups" shall mean all edible molasses, sorghum, cane, maple, and corn syrups and blends thereof.

(13) "Flour and flour mixes" shall mean all flour and flour mixes milled from wheat, buckwheat, corn, rice, or potatoes in packages, cartons, or bulk, including prepared pancake, cake, biscuit, pie crust, or gingerbread mix.

(14) "Macaroni and noodle products" shall mean any dried macaroni or noodle product including but not limited to macaroni, spaghetti, vermicelli, sea shells, bows, egg noodles, egg alphabets, and macaroni and spaghetti dinners.

(15) "Peanut butter" shall mean all spreads of ground peanuts irrespective of the size of granules or pieces of peanuts contained therein.

(16) "Vinegar" shall mean all vinegar, including, but not limited to, pure cider vinegar, distilled vinegar, malt vinegar, wine vinegar, and tarragon vinegar.

(17) "Honey" shall mean all extracted honey (including combinations of extracted and comb honey) packaged in containers of a capacity of 15 pounds or less.

(18) "Baby foods" means "baby" or "junior" foods packed in hermetically sealed containers. Excluded are dry baby cereals.

(19) "Cereals, breakfast" means bulk or packaged cereal items of any size, commonly used as breakfast foods, both uncooked and ready-to-eat types, including, but not limited to, bran flakes, dry baby cereals, farina, popped rice, rolled oats, hominy grits and flakes, and wheat germ. Excluded are barley, corn meal, rice and wheat bran flour.

(20) "Fruits, berries, and fruit juices, canned" includes, but is not limited to, apple sauce, apple cider, berry juices, concentrated fruit juices, fruit mixtures, cranberry sauce, fountain fruits, maraschino cherries, fruit nectars, all pineapple, rhubarb, and bulk apple cider. "Canned" means processed and packed in any container, whether or not hermetically sealed. Excluded are apple butter, fruit butter, jams, jellies, fruit preserves, cocoanut, olives, baby foods, dried fruits, dehydrated fruits, quick-frozen fruits, and canned citrus fruits and juices.

(21) "Fruits, quick-frozen" means all fruits, berries, fruit or berry juices, and mixtures which have been quick-frozen.

(22) "Jams, jellies, and preserves" includes but is not limited to, tomato preserves, fruit preserves, fruit butters, and smooth or crunch-type nut butters. Excluded are cranberry jelly or sauce, and peanut butter.

(23) "Pickles and relishes" (packaged or bulk) includes, but is not limited to, chow chow, pickled fruits, pickled onions, pickled peppers, pickled relishes, pickled rind, and pickled vegetables Excluded are mayonnaise-relish spreads, tartar sauce, pickled meats, and pickled fish.

(24) "Rice" (packaged or bulk) includes, but is not limited to, wild rice. Excluded are rice flour, rice flakes, and popped rice.

(25) "Sugar" means all bulk or packaged cane or beet sugar, including but not limited to, cinnamon sugar.

(26) "Vegetables and vegetable juices, canned" includes, but is not limited to, baked beans, sauerkraut, chili sauce, cocktail sauce, canned hominy, mushrooms, mushroom sauce, tomatoes, tomato catsup, tomato paste, tomato puree, tomato juice, pimientos, and Chinese-style foods including soy sauce and brown sauce. "Canned" means processed and packaged in any container, whether or not hermetically sealed. Excluded are vegetable soups, "baby" or "junior" foods, and pickles.

(27) "Vegetables, quick-frozen" shall mean all vegetables, vegetable juices, and mixtures which have been subjected to a quick-freezing process, including, but not limited to, mushrooms.

(d) *Additional instructions.* (1) A new maximum price must be calculated before making a sale of any brand, grade, variety, container type, and container size and kind of each food product included in this Appendix A after the effective date of this regulation.

(2) When a wholesaler calculates his new ceiling, he must apply the figure given in this appendix to his "net cost" based on his usual unit of purchase (per dozen, per box, etc.). This applies even though his invoice normally shows a smaller unit; i. e., Blenheim apricots in bulk are usually quoted by the processor on a per pound basis even though they are sold in 25 pound boxes. For purposes of this regulation, 25 pound boxes would be considered the usual unit of purchase.

(3) New ceilings must be calculated as soon as this regulation becomes effective and before making any sales after the effective date of this regulation, form 337:1 must be filled out. Filing of this form is not required until the date specified in Appendix A. If the wholesaler's net cost on a food product increases before the final date for calculating new maximum prices under this regulation, he may calculate a new maximum price based on his last cost, but must also enter this new price on form No, 337:1 before making any sales. The maximum price on any item in effect on the final date for determining new prices under this regulation shall be the permanent maximum price from that date forward.

APPENDIX B

OPA FORM NO. 337.1.
Make two copies, keep one, mail one to your OPA District Office

(Do not write in this space)

UNITED STATES OF AMERICA
OFFICE OF PRICE ADMINISTRATION

Wholesaler's report on new maximum prices calculated under the fixed mark-up method authorized in revised MPR #237

Typewrite or use ink:

A. Name of wholesaler _____
B. Address: Street _____
City _____ State _____

C. Type of operation (check one): Retailer-owned ____ Cash and carry ____ Service ____

D. Number of pages in this report _____

(1) Date of calculating new ceiling price	(2) Class of food product	(3) Name and brand of item	(4) Grade and type	(5) Weight or container size	(6) Supplier's name—	(7) Date of last invoice	(8) Customary unit of purchase	(9) Net cost per customary unit of purchase	(10) Applicable figure	(11) New ceiling price for customary unit of sale	(12) Old ceiling price
EXAMPLE											
April 18, 1943	Canned vegetables	King asparagus	Large green	#2 can	Jones and Co	4/17/43	24's	$6.46	1.200	$7.75	$0.60

(Use as many copies of this form as needed to list all ceiling price changes determined under the fixed mark-up method)

Notary: _____ Name of wholesaler _____

_____ Signature _____

Send this form to the OPA Office for your District

INSTRUCTIONS FOR PREPARING WHOLESALER'S OFFICIAL REPORT

The following information must be reported in the spaces shown on this form:
Line A: *Name of wholesaler.* Write name of wholesale organization.
Line B: *Address.* Write business address of organization.
Line C: *Type of operation.* Check type of wholesale operation you conduct.
Line D: *Number of pages.* At the time you send this report to OPA, write the number you are sending in this space.
Col. 1: *Date.* Show the date you calculate your new ceiling price.
Col. 2: *Class of food product* Write the class of food product in which this item falls as listed in the table of mark-ups.
Col. 3: *Brand and name of item.* Write brand name of item. Examples: "Princess Corn", "King Salmon", "Queen Sugar", etc.
Col. 4: *Grade and type.* Show additional description here. Examples: Standard, extra standard, etc. for canned goods; granulated, brown, etc. for sugar.
Col. 5: *Weight or container size.* Show weight or size of individual container. Examples: 1 pound, 2½ can, 1 pint; etc. For sugar, dried fruit, lard, etc. sold by retailers from bulk, show size of sack, can or box: 25 lbs., 100 lbs., etc.
Col. 6: *Supplier's name.* Write name of company who sold this item to you on your last purchase.
Col. 7: *Date of last invoice.* Write date shown on invoice covering your last purchase of this item.
Col. 8: *Customary unit purchase.* Write size of unit you normally purchase. Examples: canned goods, unit: 24's, 36's, 48's, etc. Packaged rice, cereals, unit: 18's, 24's, 36's, etc. Bulk sugar, rice, dried fruit, unit: 25-lb., 100-lb., etc.
Col. 9: *Net cost per customary unit of purchase.* Show the price you paid for this item delivered to your customary receiving point, less all discounts (except discounts for prompt payment). Exclude local unloading and trucking charges.
Col. 10: *Applicable figure.* Show figure in mark-up table applying to this item for your class of business.
Col. 11: *New ceiling price for customary unit of sale.* Write new ceiling price obtained by multiplying your net cost per customary unit of purchase (Col. 9) by the applicable figure (Col. 10). If your customary unit of purchase differs from your customary unit of sale for this item, divide the product of Columns 9 and 10 to obtain your new ceiling price. Example: If your net cost for rice in 100-lb. bags is $7.45 and you sell in 25-lb. bags, multiply $7.45 by your applicable figure and divide by four to obtain your ceiling price for your customary selling unit for this item (25-lb. bags).
Col. 12: *Old ceiling price for customary unit of sale.* Write ceiling price you have been using for this item before calculating new ceiling price.

Effective Date

This regulation shall become effective on May 10, 1943 except as to calculation of maximum prices and sales of Item No. 18 to and including Item No. 27 in Appendix A, for which it shall become effective on May 17, 1943.

Issued this 10th day of May, 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7388; Filed, May 10, 1943; 4:50 p. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[Rev. MPR 238]

FIXED MARK-UP REGULATIONS FOR SALES OF CERTAIN FOOD PRODUCTS AT RETAIL

Maximum Price Regulation No. 238[1] is redesignated Revised Maximum Price Regulation No. 238 and is amended to read as follows:

A statement of the considerations involved in the issuance of this Revised Maximum Price Regulation No. 238 has been issued simultaneously herewith and filed with the Division of the Federal Register.*

In the judgment of the Price Administrator, the maximum prices established by this maximum price regulation are and will be generally fair and equitable and comply with the requirements of the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, and Executive Order No. 9328, and will effectuate the purposes of said Act and Executive Orders.

§ 1351.601 *Fixed mark-up regulation for sales of certain food products at retail.* Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, and Executive Order No. 9328, Revised Maximum Price Regulation No. 238, which is annexed hereto and made a part hereof, is hereby issued.

AUTHORITY: § 1351.601 issued under Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.

REVISED MAXIMUM PRICE REGULATION 238—FIXED MARK-UP REGULATION FOR SALES OF CERTAIN FOOD PRODUCTS AT RETAIL

ARTICLE I—GENERAL PROVISIONS

Article I—General Provisions

SECTION 1 *Applicability of this Revised Maximum Price Regulation No. 238*—(a) *What commodities may be priced under this regulation.* This regulation applies only to the particular food products listed in Appendix A of this regulation.

(b) *To what types of sellers this regulation applies.* This regulation applies only to sellers at retail (hereinafter referred to as retailers), which for the purpose of this regulation are divided into the following four classes:

(1) Class 1: "Independent" retail stores with "annual gross sales" of less than $50,000. A retail store shall be an "independent" retail store if it is *not* one of a group of 4 or more stores under one ownership whose combined "annual gross sales" are $500,000 or more.

(2) Class 2: "Independent" retail stores with "annual gross sales" of $50,000 or more, but less than $250,000.

(3) Class 3: Retail stores, other than "independent" retail stores, with "annual gross sales" of less than $250,000.

(4) Class 4: Any retail store with "annual gross sales" of $250,000 or more.

(See section 21 for the meaning and method of determining "annual gross sales".)

(c) *Purpose of this regulation.* This regulation provides new maximum prices for the particular food products listed in Appendix A. These new maximum prices are to be the only maximum prices for all sales of such food products after the effective date of this regulation and are to be used instead of the maximum prices calculated under any other price regulation or order issued by the Office of Price Administration.

(d) *Prohibition.* On and after May 10, 1943, regardless of any contract or obligation, no person is permitted to sell or deliver at retail any of the food products listed in Appendix A at a price which is higher than the maximum price fixed by this regulation, and no person is permitted to buy or receive any of these food products in the course of trade or business at a price higher than that maximum price. Lower prices than the maximum prices may be charged and paid.

SEC. 2 *Exempt Sales*—(a) *Sales by "retail route-sellers".* This regulation shall not apply to sales by "retail route-sellers".

A "retail route-seller" is a retailer who sells food products from an inventory stocked in trucks or other conveyances operated by driver-salesmen over regular routes. A retailer is a "retail route-seller" only of the food products he sells in this way.

(b) *Sales through automatic vending machines.* This regulation shall not apply to sales made through automatic vending machines.

SEC. 3 *How a retailer calculates his maximum prices for food products listed in Appendix A.* (a) The retailer must calculate his maximum price for each item (that is, for each kind, brand, grade, variety, container type and container size) of a food product listed in Appendix A as follows:

(1) The retailer should first find from section 1 (b) in what class of retailer he falls under this regulation.

(2) The retailer will next find his "net cost" of the item he is pricing.

(i) Where the item being priced is purchased by the retailer from the manufacturer, "net cost" in this regulation means the amount the retailer paid for the item delivered at his customary receiving point, less all discounts allowed him except the discount for prompt payment; however, no charge or cost for local unloading or local trucking shall ever be included.

(ii) Where the item being priced is purchased by the retailer from a wholesaler, "net cost" in this regulation means the amount paid by the retailer as shown on the invoice of the wholesaler, less all discounts allowed him except the discount for prompt payment. When transportation charges, other than local trucking, are paid by the retailer and are not shown on the wholesaler's invoice, they may be added to the wholesaler's invoice in calculating "net cost".

(iii) "Net cost" shall in all cases be based on the retailer's most recent purchase of a customary quantity from a customary supplier and on the customary mode of transportation.

(3) The retailer will then multiply his "net cost" by the figure in Appendix A which applies to a retailer of his class for the item being priced.

(4) The resulting amount shall be the retailer's maximum price for the particular item, but before making any sales at this new price he must write the price in ink on the invoice used in figuring it. All invoices used for calculating prices must be segregated or identified and preserved to be presented upon demand.

SEC. 4 *How a retailer may recalculate a new maximum price if his "net cost" increases before the final date for calculating a maximum price.* If, after calculating any maximum price and after writing the price in ink on the invoice used in figuring it, a retailer, before the

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*Copies may be obtained from the Office of Price Administration.

[1] 7 F.R. 8209, 8303, 9184, 10013, 10227, 10714. 8 F.R. 120, 374, 532, 1116, 2106, 2672, 3946, 5266.

final date set opposite the name of the food product in Appendix A for the calculation of a maximum price, purchases a customary quantity of the same item from a customary supplier at a higher "net cost" than he used in calculating his maximum price, he may calculate a new maximum price on the basis of his new "net cost". Before making any sales at this new price, he must write the price in ink on the invoice used in figuring it.

SEC. 5 *Final dates for calculating and recording maximum prices*—(a) *Calculating and recording maximum prices.* A retailer must calculate and record on the appropriate invoice all new maximum prices for any item of a food product on or before the date set opposite the name of that food product in Appendix A.

(b) *Calculating of maximum prices by an operator of more than one retail outlet.* Whenever the maximum prices of a food product calculated under this regulation would be identical for more than one retail store of the same class owned or operated by the same person, calculations and records may be made by the central or pricing office for all such stores which will have an identical maximum price. Such calculations and records need be kept by such person only in the office in which they were made up.

SEC. 6 *How a retailer calculates maximum prices for "new items".* When a retailer receives delivery of an item of a food product listed in Appendix A after the final date provided for him in this regulation for calculating maximum prices for items of that food product, and for which he has not calculated a maximum price under this regulation, he shall consider that item a "new item", and must, before making any sales of it, calculate and record his maximum price in accordance with the provisions of section 3, except that he shall calculate his maximum price based on the "net cost" of his first purchase of that item. This maximum price cannot be changed and may not be recalculated under the provisions of section 4.

SEC. 7 *Maximum prices set under this regulation cannot be changed. A maximum* price for any item of a food product calculated under this regulation by a retailer and properly recorded on the invoice he used in figuring it shall be his maximum price for that item from that time forward. However, where a retailer recalculates his maximum price under section 4 of this regulation, such recalculated price shall be his maximum price for that item from and after the date that the recalculated price is recorded on the invoice.

SEC. 8 *How a retailer must post his class.* At all times, a retailer must have his class of retail store under this regulation posted on a sign reading "OPA 1", "OPA 2", "OPA 3", or "OPA 4", whichever applies, so that it can be clearly seen by his customers.

SEC. 9 *Fractions of cents.* Any maximum price calculated under this regulation shall be based on the retailer's customary unit of sale, that is, per can, per jar, per package, per pound or the like. All such calculations resulting in a fraction of a cent shall be reduced to the nearest lower cent if the fraction is less than one-half cent and shall be increased to the nearest higher cent if the fraction is one-half cent or more.

SEC. 10 *Records.* (a) On the same day as a retailer calculates any new maximum price under this regulation and records his price upon the appropriate invoice he shall record on his base-period record required in Section 1499.11 of the General Maximum Price Regulation[2] that new maximum price. The record of the old maximum price shall not be destroyed.

(b) In addition to the records required in § 1499.11 of the General Maximum Price Regulation or any other applicable price regulation, every retailer shall keep a copy of all Forms No. 338:1 which were filed or on which he has recorded information as formerly required by this regulation and all invoices or other records showing how he calculated any maximum price under this regulation, which records shall be kept and made available for examination by the Office of Price Administration wherever the commodities are sold for so long as the Emergency Price Control Act of 1942, as amended, remains in effect.

SEC. 11 *Licensing and registration.* The licensing and registration provisions of sections 15 and 16 of the General Maximum Price Regulation shall apply to every person making sales subject to this regulation. Sections 15 and 16 provide, in brief, that a license is required of all persons selling at retail commodities for which ceiling prices are established. A license is automatically granted. It is not necessary to apply for the license, but all sellers may later be required to register. The license may be suspended for violations in connection with the sale of any commodity for which ceiling prices are established. No person whose license is suspended may sell any such commodity during the period of suspension.

SEC. 12 *Evasion.* The price limitations set forth in this regulation shall not be evaded, whether by direct or indirect methods, in connection with any offer, solicitation, agreement, sale, delivery, purchase or receipt of, or relating to, any of the commodities listed in Appendix A hereof, alone or in conjunction with any other commodity or by way of commission, service, transportation, or any other charge, or discount, premium or other privilege, or by tying-agreement or other trade understanding, or by calculating "net cost" on purchases from non-customary suppliers, purchases of non-customary quantities, or purchases on non-customary modes of transportation, or otherwise.

SEC. 13 *Enforcement.* Persons violating any provisions of this regulation are subject to the criminal penalties, civil enforcement actions, suits for treble damages and proceedings for suspension of licenses provided by the Emergency Price Control Act of 1942, as amended.

SEC. 14 *Community prices.* From time to time the Office of Price Administration may, by order, fix community (dollars-and-cents) maximum prices for some or all of the food products covered by this regulation.

These orders will specify the locality and classes of retailers for which the community prices will replace maximum prices calculated under this regulation. Where the orders do not specify the class and locality of any particular retailer, he shall continue to calculate his maximum prices under this regulation.

Article II—Special Pricing Provisions

SEC. 15 *Additions allowed retailers in special cases*—(a) *Addition allowed for transportation of food products to a retail store, other than an "independent" retail store, from a warehouse which is the retailer's customary receiving point.* A retail store, other than an "independent" retail store, which is located at a distance of 200 miles or more from a warehouse which is its customary receiving point for an item of a food product listed in Appendix A may, in calculating a new maximum price under this regulation for any such item which is delivered from such warehouse to the store, add to the applicable figure in Appendix A whichever of the following amounts is applicable:

(1) Retail stores located at a distance of from 200 up to but not including 300 miles from such warehouse may add .01 to the applicable figure in Table A;

(2) Retail stores located at a distance of from 300 miles up to but not including 400 miles from such warehouse may add .02 to the applicable figure in Table A;

(3) Retail stores located at a distance of 400 miles or more from such warehouse may add .03 to the applicable figure in Table A.

(b) *Addition allowed for packaging certain food products purchased in bulk.* A retailer who purchases any item of rice, dried fruit or dry edible beans in bulk and then packages and sells such food product in sealed transparent bags or sealed packages may add to his maximum price calculated under this regulation whichever of the following amounts is applicable:

(1) One cent for each such package or bag with a net weight of less than 2 pounds.

(2) Two cents for each package or bag with a net weight of 2 pounds or more.

(3) The resulting amount shall be the retailer's new maximum price for such item.

SEC. 16 *How a new retailer calculates his maximum prices under this regulation*—(a) *How a new retailer determines his class.* A retailer who opens a new retail store after May 10, 1943 shall, for the purpose of this regulation be considered a new retailer and be classified as a Class 1 retailer, unless he is *not* an "independent" retail store, in which case he shall be classified as a Class 3 retailer.

At the end of 3 months following the opening of the new retail store, the new retailer must ascertain his gross sales volume for the 3 month period, and multiply that figure by four to arrive at an estimated "annual gross sales". If this figure is an amount that would place the new retailer in a class different from the one in which he is placed by the foregoing

[2] 8 F.R. 3096, 3849, 4347, 4486, 4724, 4978, 4848.

paragraph, he must, within 10 days following the 3 month period, recalculate his maximum prices in accordance with his new classification and also notify in writing his local War Price and Rationing Board of his new classification. He shall apply the applicable figure as set forth in Appendix A to the "net cost" used in calculating his maximum prices in effect at the end of the 3 month period.

(b) *How a new retailer calculates his maximum prices.* A new retailer shall calculate his maximum prices in accordance with section 3 of this regulation except that in calculating the first maximum prices under this regulation the "net cost" of the item being priced shall be based on the new retailer's first purchase of the item.

(c) *Recalculation of maximum prices by a new retailer.* If, within 60 days after the opening of the new retail store, a new retailer purchases a customary quantity of an item, for which he has already calculated a maximum price under this regulation from a customary supplier at a higher "net cost" than he used in calculating that maximum price, he may calculate a new maximum price on the basis of his new "net cost". Before making any sales at this new price, he must write the price in ink on the invoice used in calculating it.

SEC. 17. *How a retailer calculates his maximum prices for food products he "manufactures or otherwise processes".* If a retailer "manufactures or otherwise processes" and sells at retail any item covered by this regulation, he must calculate his "net cost" or maximum price for such item under whichever of the following provisions applies:

(a) If the item is one for which the Office of Price Administration has issued, or later issues, a regulation naming dollars-and-cents maximum prices for sales by manufacturers, but the regulation makes no provision for manufacturers selling at retail, the lowest maximum price under that regulation for sales delivered to the retailer's customary receiving point shall be his "net cost".

(b) If the item is one for which the Office of Price Administration has issued, or later issues, a regulation naming dollars-and-cents maximum prices for sales by manufacturers at retail, the retailer will use the maximum price fixed in that regulation for sales at retail as his maximum price. He will not attempt to figure a "net cost" and apply a mark-up under this regulation.

(c) If the item is one for which the Office of Price Administration has not issued, or does not later issue, a regulation establishing dollars-and-cents maximum prices for sales by manufacturers, the retailer shall figure his maximum price for such item as a manufacturer under the appropriate regulation covering sales of such item by manufacturers. He will not attempt to figure a "net cost" and apply a mark-up under this regulation.

(d) "Manufacture or otherwise process" shall mean blending, freezing, canning, preserving, milling, crushing, straining, roasting, centrifuging, cooking, distilling, purifying with heat, and other similar operations.

For the purpose of this regulation a retailer shall be considered a manufacturer of an item which he "manufactures or otherwise processes" directly, or which is manufactured by a person to whom he supplies the raw material.

SEC. 18 *How a retailer calculates his maximum prices if his class under this regulation is different than it was under Maximum Price Regulation No. 238 as originally issued.* If, because of the establishment in this regulation of classes of retailers different from those established under Maximum Price Regulation No. 238 as originally issued, a retailer falls within a different class from that in which he was, he must recalculate his maximum prices for all items under this regulation by applying the mark-ups given in Appendix A for his new class to the "net cost" he used in calculating his maximum prices in effect before May 10, 1943.

SEC. 19 *Taxes.* Any tax upon or incident to a sale at retail of food covered by this regulation, which the statute or ordinance imposing the tax does not prohibit the seller from stating and collecting separately from the selling price, may be collected by a retailer in addition to his maximum price if he states the tax separately.

SEC. 20 *Mail order sales.* When a retailer makes mail order sales, he may add to his maximum prices calculated under this regulation his actual express charges or postage to the buyer's address.

Article III—Miscellaneous Provisions

SEC. 21 *How a retailer determines his "annual gross sales"*—(a) *In general.* (1) A retailer's "annual gross sales" shall be his total sales for the calendar year 1942. All sales as shown on his books, except sales made by a restaurant operated in conjunction with his retail store, must be included. A retailer may use his Federal Income Tax Return to get his total sales for all or any part of the calendar year 1942 which is covered by such return. If the retailer owns more than one retail store, he must figure the sales for each store separately, treating each as a separate retailer.

(2) If a retailer was not in operation during the entire year 1942, he must divide his total gross sales from the time he began operation up to May 10, 1943, by the number of weeks in that period. This will give the retailer his weekly average sales. He must then multiply that figure by 52, and take the result as his "annual gross sales".

(b) *In special cases*—(1) *Department stores.* If a retailer is a department store, that is, a store in which the greater volume of sales is general merchandise and not foods, and foods are sold in a separate department or departments, the retailer must determine his class by using only the "annual gross sales" of that food department or departments. Sales by a restaurant are not to be considered sales of food in a separate department.

(2) *Stores in which more than one retailer operates.* (i) If a retailer sells food products in a retail store in which there are other food retailers, none of whom sells a complete line of the same general class of food, he must find his "annual gross sales" by taking the combined "annual gross sales" of all the food retailers in that store.

(ii) If a retailer sells food products in a retail store in which more than one retailer sells a complete line of the same general class of food, he shall be considered a separate retailer and must find his "annual gross sales" by using only his own sales.

SEC. 22 *Transfer of business and stock in trade.* If, after May 10, 1943, a person acquires in any way the business, assets, and stock in trade of any retail store covered by this regulation and carries on the business, or continues to deal in the same type of food products in that same store, his maximum prices shall be the same as those of the former owner if no transfer had taken place. The new owner must keep all the records needed to verify his maximum prices. The former owner must either preserve and make available to the new owner, or give him, all the records of his transactions before the new owner acquired the store which the new owner may need to comply with the record provisions of this regulation.

If the transfer changes the business from one class of retail store to another, the new owner's maximum prices shall be those for the class of retailer to which he belongs under this regulation. (For example: if a person acquires the business of a Class 1 retail store, and, by virtue of the new ownership, it becomes a Class 3 retail store, the new owner's maximum prices must be figured as a Class 3 retailer using the Class 3 mark-ups, and the same "net cost" as the former owner used in establishing his maximum prices.)

SEC. 23 *Relation between this regulation and the General Maximum Price Regulation.* The provisions of this regulation supersede the provisions of the General Maximum Price Regulation and any other applicable price regulation or order issued by the Office of Price Administration with respect to sales and deliveries for which maximum prices are established by this regulation. However, the following sections of the General Maximum Price Regulation shall continue to be applicable to every retailer selling any food product listed in Appendix A:

(a) Determination of maximum prices by sellers at retail operating more than one retail establishment (§ 1499.4a).
(b) Sales for export (§ 1499.6).
(c) Base-period records (§ 1499.11).
(d) Current records (§ 1499.12).
(e) Sales slips and receipts (§ 1499.14).
(f) Maximum prices of cost-of-living commodities; statement, marketing, or posting (§ 1499.13).

SEC. 24 *Definitions.* Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942, and in §§ 1499.2 and 1499.20 of the General Maximum Price Regulation shall apply to terms used herein.

SEC. 25 *Geographical applicability.* The provisions of this regulation shall apply to the 48 states of the United States and the District of Columbia.

APPENDIX A

(a) (FIGURES TO BE USED BY RETAILERS IN DETERMINING NEW MAXIMUM PRICES UNDER THIS REGULATION (NEW MAXIMUM PRICES ARE REQUIRED AFTER THE EFFECTIVE DATE OF THIS REGULATION))

Food Products [1]	Figures to be multiplied by "net cost" of items in determining new maximum prices under this regulation				
	Last date for determining new maximum prices under this regulation	"Independent" retailer with "annual gross sales"		Class 3—retailers, other than "independent," with annual gross sales under $250,000	Class 4—any retailer with "annual gross sales" of $250,000 or more
		Class 1—under $50,000	Class 2—$50,000 but less than $250,000		
1. Fruit, dried	May 20, 1943	1.27	1.25	1.23	1.22
2. Lard	May 20, 1943	1.20	1.18	1.13	1.10
3. Dry edible beans	May 20, 1943	1.36	1.36	1.34	1.29
4. Coffee	May 20, 1943	1.17	1.17	1.12	1.11
5. Fish, processed	May 20, 1943	1.27	1.27	1.21	1.21
6. Oils, cooking and salad	May 20, 1943	1.28	1.28	1.24	1.16
7. Shortening, hydrogenated	May 20, 1943	1.09	1.09	1.07	1.06
8. Shortening, other	May 20, 1943	1.18	1.18	1.13	1.09
9. Corn meal	May 20, 1943	1.31	1.31	1.27	1.23
10. Canned citrus fruits and juices	May 20, 1943	1.26	1.26	1.24	1.22
11. Evaporated and condensed milk	May 20, 1943	1.20	1.20	1.10	1.09
12. Syrups	May 20, 1943	1.28	1.28	1.24	1.21
13. Flour and flour mixes	May 20, 1943	1.27	1.27	1.23	1.15
14. Macaroni and noodle products	May 20, 1943	1.32	1.32	1.27	1.26
15. Peanut butter	May 20, 1943	1.32	1.32	1.31	1.31
16. Vinegar	May 20, 1943	1.39	1.34	1.27	1.26
17. Honey	May 20, 1943	1.32	1.32	1.31	1.31
18. Baby foods	July 8, 1943	1.25	1.23	1.21	1.19
19. Cereals, breakfast	July 8, 1943	1.22	1.20	1.13	1.11
20. Fruits, berries, and fruit juices, (canned or quick-frozen)	July 8, 1943	1.26	1.26	1.24	1.22
21. Jams, jellies and preserves	July 8, 1943	1.32	1.32	1.31	1.31
22. Pickles and relishes	July 8, 1943	1.31	1.30	1.29	1.25
23. Rice	July 8, 1943	1.20	1.20	1.18	1.15
24. Sugar	July 8, 1943	1.17	1.12	1.07	1.06
25. Vegetables and vegetable juices, (canned or quick-frozen)	July 8, 1943	1.31	1.31	1.26	1.23

[1] As described in "Definitions of Food Products" below.

(b) *Example of how to compute new maximum prices.* An "independent" retailer must secure a new maximum price on bulk, choice, Blenheim apricots which he has bought from a wholesaler at a "net cost" (as shown on the invoice) of $6.50 per 25-pound box. This "independent" retailer had "annual gross sales" of $18,000 in 1942. Therefore, he takes the dried fruit figure for his class ("independent" retailers with less than $50,000 "annual gross sales", Class I—1.27), and multiplies it by the cost of $6.50 per box. The resulting figure is divided by 25 to secure his ceiling per pound. This will give a unit price of 33¢ as his new ceiling, as shown in the calculation below.

Invoice cost (from wholesaler), per 25 lb. box $6.50
Multiplied by adjustment figure 1.27
4550
1300
650
Number of pounds in purchase unit ..... 25 / 8.2550 / $.3302
75
75
75
50
50

Since the fractional part of a cent is less than one-half cent, the retailer's permitted ceiling is 33¢ under § 9 of this regulation which provides that fractions of less than one-half cent shall be adjusted to the next lower cent. Fractions equal to one-half cent or more shall be rounded to the next higher cent.

(c) *Definitions of food products on which retailers must calculate new maximum prices under this regulation.* (1) "Fruit, dried" shall mean dried apples, apricots, currants, nectarines, peaches, pears, prunes, raisins and any combination of the above, packaged or bulk. Stuffed or glaced dried fruit and figs shall be excluded.

(2) "Lard" shall mean all pure packaged or bulk lard derived wholly from pork.

(3) "Dry edible beans" shall mean all threshed and dried field or garden beans used for human consumption.

(4) "Coffee" shall mean roasted coffee, either whole or ground; decaffeinated coffee; coffee concentrates; chicory; coffee compounds consisting of a blend of coffee and any other product; cereals, beans, peas, and other products and concentrates thereof designated as or intended for use as, coffee substitutes or coffee extenders.

(5) "Fish, processed" shall mean all canned fish and sea food and all salted, pickled, dried or otherwise processed fish except smoked fish and smoked sea food not canned; excluded are all fresh or frozen fish and sea food.

(6) "Oils, cooking and salad" shall mean all vegetable, fruit and leaf plant oil, whether pure or mixed; but shall not include prepared dressings or pure olive oil.

(7) "Shortening, hydrogenated" shall include all fully hydrogenated pure vegetable shortenings, such as Bakerite, Crisco, Dexo, Krogo, Royal Satin, Spry and Tex.

(8) "Shortening, other" shall include all shortenings except those included in (7) above, and except pure lard.

(9) "Corn meal" shall mean all corn meal in package or bulk sold for human consumption.

(10) "Canned citrus fruits and juices" shall mean all canned fruits and juices in hermetically sealed containers made from fresh citrus fruits including, but not limited to, oranges, lemons, limes, grapefruit and tangerines.

(11) "Evaporated and condensed milk" shall mean all evaporated, concentrated or condensed milk in hermetically sealed containers and also powdered whole or skim milk packaged for the ultimate consumer.

(12) "Syrups" shall mean all edible molasses, sorghum, cane, maple and corn syrup and blends thereof.

(13) "Flour and flour mixes" shall mean all flour and flour mixes milled from wheat, buckwheat, corn, rice, or potatoes in packages, cartons, or bulk, including prepared pancake, cake, biscuit, pie crust, or gingerbread mix.

(14) "Macaroni and noodle products" shall mean any dried macaroni or noodle product, including but not limited to, macaroni, spaghetti, vermicelli, sea shells, bows, egg noodles, egg alphabets, and macaroni and spaghetti dinners.

(15) "Peanut butter" shall mean all spreads of ground peanuts irrespective of the size of granules or pieces of peanuts contained therein.

(16) "Vinegar" shall mean all vinegar, including, but not limited, to pure cider vinegar, distilled vinegar, malt vinegar, wine vinegar, and tarragon vinegar.

(17) "Honey" shall mean all extracted honey (including combinations of extracted and comb honey) packaged in containers of a capacity of 15 pounds or less.

(18) "Baby foods" means "baby" or "junior" foods packed in hermetically sealed containers. Excluded are dry baby cereals.

(19) "Cereals, breakfast" means bulk or packaged cereal items of any size commonly used as breakfast foods, both uncooked and ready-to-eat types, including, but not limited to, bran flakes, dry baby cereals, farina, popped rice, rolled oats, hominy grits and flakes, and wheat germ. Excluded are barley, corn meal, rice and wheat bran flour.

(20) "Fruits, berries, and fruit juices, canned or quick-frozen" includes, but is not limited to, apple sauce, apple cider, berry juices, concentrated fruit juices, fruit mixtures, cranberry sauce, fountain fruits, maraschino cherries, fruit nectars, all pineapple, rhubarb, and bulk apple cider, processed or frozen, in any container, whether or not hermetically sealed. Excluded are apple butter, fruit butters, jams, jellies, fruit preserves, cocoanut, olives, baby foods, dried fruits, dehydrated fruits, and canned citrus fruits and juices.

(21) "Jams, jellies, and preserves" includes, but is not limited to, tomato preserves, fruit preserves, fruit butters, and smooth or crunch-type nut butters. Excluded are cranberry jelly or sauce, and peanut butter.

(22) "Pickles and relishes" (packaged or bulk) includes, but is not limited to, chow chow, pickled fruits, pickled onions, pickled peppers, pickled relishes, pickled rind, and pickled vegetables. Excluded are mayonnaise-relish spreads, tartar sauce, pickled meats, and pickled fish.

(23) "Rice" (packaged or bulk) includes, but is not limited to, wild rice. Excluded are rice flour, rice flakes, and popped rice.

(24) "Sugar" means all bulk or packaged cane or beet sugar, including, but not limited to, cinnamon sugar.

(25) "Vegetables and vegetable juices, canned or quick-frozen" includes, but is not limited to, baked beans, sauerkraut, chili sauce, cocktail sauce, canned hominy, mushrooms, mushroom sauce, tomatoes, tomato catsup, tomato paste, tomato puree, tomato juice, pimientoes, and Chinese style foods including soy sauce and brown sauce. "Canned" means processed and packaged in any container, whether or not hermetically sealed. Excluded are vegetable soups, "baby" or "junior" foods, and pickles.

(d) *Additional instructions.* (1) A new maximum price must be calculated before making a sale of any brand, grade, variety, container type, and container size and kind of each food product included in this Appendix A after the effective date of this regulation.

(2) When a retailer calculates his new ceiling, he must apply the figure given in this appendix to his "net cost" based on his usual unit of purchase (per dozen, per box, etc.). After he has determined a new maximum price on this basis, he divides the resulting figure by the number of sales units (cans, pounds, etc.)

included in the unit of purchase, to obtain a new ceiling on a sales unit basis.

(3) New ceilings must be calculated as soon as this regulation becomes effective, and, before making any sales, record must be made on the invoice used in figuring the maximum prices. If the retailer's "net cost" on a food product increases before the final date for calculating new maximum prices under this regulation, he may calculate a new maximum price based on his last invoice cost, but must also record his new price on the invoice he used in figuring it, before making any sales. The maximum price on any item in effect on the final date for determining new prices under this regulation shall be the permanent maximum price from that date forward.

Effective Date

This regulation shall become effective on May 10, 1943 except as to calculation of maximum prices and sales of Item No. 18 to and including Item No. 25 in Appendix A for which it shall become effective on May 17, 1943.

Issued this 10th day of May, 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7389; Filed, May 10, 1943; 4:51 p. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[Rev. MPR 263]

SALES OF CERTAIN PERISHABLE FOOD COMMODITIES AT RETAIL

Maximum Price Regulation No. 268[1] is redesignated Revised Maximum Price Regulation No. 268 and is amended to read as follows:

A statement of the considerations involved in the issuance of this Revised Maximum Price Regulation No. 268 has been issued simultaneously herewith and filed with the Division of the Federal Register.*

In the judgment of the Price Administrator, the maximum prices established by this maximum price regulation are and will be generally fair and equitable and comply with the requirements of the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, and Executive Order No. 9328, and will effectuate the purposes of said Act and Executive Orders.

§ 1351.1101 Sales of certain perishable food commodities at retail. Under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, and Executive Order No. 9328, Revised Maximum Price Regulation No. 268, which is amended hereto and made a part hereof, is hereby issued.

AUTHORITY: § 1351.1101 issued under Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.

*Copies may be obtained from the Office of Price Administration.

[1] 7 F.R. 9184; 8 F.R. 322, 1747, 2483, 2664, 3527, 3732, 4524, 4929.

REVISED MAXIMUM PRICE REGULATION 268—SALES OF CERTAIN PERISHABLE FOOD COMMODITIES AT RETAIL

ARTICLE I—GENERAL PROVISIONS

ARTICLE II—SPECIAL PRICING PROVISIONS

ARTICLE III—MISCELLANEOUS PROVISIONS

Article I—General Provisions

SECTION 1 *Applicability of this Revised Maximum Price Regulation No. 268*—(a) *What commodities must be priced under this regulation.* This regulation applies only to the food commodities listed in Appendix A of this regulation.

(b) *To what types of sellers this regulation applies.* This regulation applies only to sellers at retail (hereinafter referred to as retailers) which for the purpose of this regulation are divided into the following four classes:

(1) Class 1: "Independent" retail stores with "annual gross sales" of less than $50,000. A retail store shall be an "independent" retail store if it is *not* one of a group of 4 or more stores under one ownership whose combined "annual gross sales" are $500,000 or more.

(2) Class 2: "Independent" retail stores with "annual gross sales" of $50,000 or more, but less than $250,000.

(3) Class 3: Retail stores, other than "independent" retail stores, with "annual gross sales" of less than $250,000.

(4) Class 4: Any retail store with "annual gross sales" of $250,000 or more.

(See section 20 for the meaning and method of determining "annual gross sales".)

(c) *Purposes of this regulation.* This regulation provides new maximum prices for the particular food commodities listed in Appendix A. These maximum prices are to be the only maximum prices for all sales at retail of such food commodities after the effective date of this regulation and are to be used instead of the maximum prices established by any other applicable price regulation or order issued by the Office of Price Administration.

(d) *Prohibition.* On and after May 10, 1943, regardless of any contract or other obligation, no person is permitted to sell or deliver at retail any of the food commodities listed in Appendix A at a price which is higher than the maximum price fixed by this regulation, and no person is permitted to buy or receive any of these food commodities at a price higher than that maximum price. *Lower prices than the maximum prices may be charged and paid.*

SEC. 2 *When a retailer must calculate maximum prices for the food commodities listed in Appendix A.* A retailer must calculate maximum prices for the food commodities covered by this regulation once every week. This calculation shall be made on Thursday of every week and before any sales of such commodity are made on that day. All maximum prices shall be calculated and stated in the unit of sale designated for the commodity in Appendix A (for example, maximum prices for potatoes will be calculated and stated for 5 lbs.).

SEC. 3 *How a retailer calculates his maximum prices for the food commodities listed in Appendix A.* (a) A retailer shall calculate his maximum price for the designated unit of sale of each item (that is, for each kind, size, grade, and variety) of food commodities listed in Appendix A as follows:

(1) He shall first find from section 1 (b) in what class of retailers he falls under this regulation.

(2) The retailer will then find his "net cost" of the item he is pricing.

(i) "Net cost" of an item shall in all cases be based on the unit of purchase of the retailer's largest single purchase during the preceding week of that item from his customary type of supplier. "Largest single purchase" means the purchase of the greatest quantity which was received by the retailer at his customary receiving point during the 7 days before the day of the week on which the maximum price must be calculated. (For example, if a retailer during the preceding week purchased 25 bags of 100 lbs. each of white round, U. S. No. 1 potatoes at $4.10 per bag, and also purchased 15 bags of the same grade and variety of potatoes at $4.25 per bag, then the purchase of 25 bags at $4.10 per bag is the "largest single purchase" of that grade and variety of potatoes made during that week, and the unit of purchase is the 100 lb. bag). If there were more than one purchase of the same quantity, the one most

recently delivered shall be the "largest single purchase".

(ii) Where the item being priced is purchased by the retailer from other than an intermediate seller such as, but not limited to, a grower, primary seller, country shipper, processor, packer or the like, "net cost" means the amount paid by the retailer for the unit of purchase of his "largest single purchase" delivered at his customary receiving point, less all discounts allowed him except the discount for prompt payment; however, no charge or cost for local trucking or local unloading shall be included.

(iii) Where the item being priced is purchased by the retailer from an intermediate seller such as, but not limited to, wholesalers, carlot receivers, branch warehouses or jobbers, but not another retailer, "net cost" means the amount paid by the retailer for the unit of purchase of his "largest single purchase" as shown on the intermediate seller's invoice (sales ticket, cash receipt, or other written evidence of sale), less all discounts allowed to the retailer except the discount for prompt payment. When transportation charges, other than local trucking, are paid by the retailer and are not shown on the intermediate seller's invoice, they may be added to the invoice in calculating "net cost".

(3) The retailer shall then multiply his "net cost" of the unit of purchase by the figure in Appendix A which applies to a retailer of his class for the food commodity being priced.

(4) The retailer will then divide this amount by the number of designated units of sale in his unit of purchase. (For example, if his unit of purchase is a 100 lb. bag and the designated unit of sale is 5 lbs., he will divide by 20.) The resulting figure will be the retailer's maximum price for the designated unit of sale for the item being priced and shall be his maximum price until such time as the "net cost" of his "largest single purchase" changes.

(b) Before making any sales of such item at this maximum price, the retailer must post his maximum price as set forth in section 5.

(c) In calculating his first maximum price of any item after the effective date of this regulation, a retailer, who made no purchases of that item during the 7 days before the effective date of this regulation, shall use his most recent purchase of the item as his "largest single purchase" in determining "net cost".

(d) Any group of stores under one ownership pricing from a central point may calculate their maximum prices based on the "net cost" of purchases during the 7 days preceding Tuesday of each week. Those prices must not be put into effect before the following Thursday.

SEC. 4 *How a retailer calculates the sales price of amounts other than the designated units of sale.* If a retailer sells an amount other than the designated unit of sale, he shall multiply his maximum price for the designated unit of sale by the number of times the designated unit of sale is divisible into the quantity being sold. (For example, if the retailer sells 15 lbs. of potatoes and has a maximum price of 15¢ for 5 lbs., (the designated unit of sale), he multiplies 15¢ by 3 and gets 45¢; if he sells one lb. he multiplies 15¢ by ⅕ and gets 3¢.)

SEC. 5 *How a retailer must post his maximum prices and class*—(a) *Prices.* A retailer must post his maximum price for each item calculated under this regulation in clear and legible printing or writing at the opening of business on each Thursday at the place in the store or retail establishment where the food commodity is offered for sale, stating in addition to the maximum prices, the grade and variety of each item.

(b) *Class.* At all times a retailer must have his class of retail store under this regulation posted on a sign reading "OPA 1", "OPA 2", "OPA 3", or "OPA 4", whichever applies, so that it can be clearly seen by his customers.

SEC. 6 *Fractions of cents.* Any calculation of a maximum price for a designated unit of sale or for a greater quantity as provided in sections 3 and 4 which results in a fraction of a cent shall be reduced to the nearest lower cent if the fraction is less than one-half cent and shall be increased to the nearest higher cent if the fraction is one-half cent or more. Any calculation of a maximum price for a quantity less than a designated unit of sale as provided in section 4 which results in a fraction of a cent shall be increased to the nearest higher cent.

SEC. 7 *Sales slips and receipts.* A retailer who has customarily given a purchaser a sales slip, receipt or other similar evidence of purchase, must continue to do so. Furthermore, regardless of custom, a retailer must give any customer who asks for it a receipt showing the date of the sale, the retailer's name and address, the customer's name, each food item sold and the price charged for it.

SEC. 8 *Records.* Every retailer of food commodities covered by this regulation shall keep all records upon which he calculated any maximum price, "net cost", or "largest single purchase" under this regulation, whether currently in effect or not, which records shall be kept for so long as the Emergency Price Control Act of 1942, as amended, remains in effect.

SEC. 9 *Licensing and registration.* The licensing and registration provisions of sections 15 and 16 of the General Maximum Price Regulation [2] shall apply to every person making sales subject to this regulation. Sections 15 and 16 provide, in brief, that a license is required of all persons selling at retail commodities for which ceiling prices are established. A license is automatically granted. It is not necessary to apply for the license, but all sellers may later be required to register. The license may be suspended for violations in connection with the sale of any commodity for which ceiling prices are established. No person whose license is suspended may sell any such commodity during the period of suspension.

SEC. 10 *Evasion.* The price limitations set forth in this regulation shall not be evaded, whether by direct or indirect methods, in connection with any offer, solicitation, agreement, sale, delivery, purchase or receipt of, or relating to, any of the commodities listed in Appendix A hereof, alone or in conjunction with any other commodity or by way of commission, service, transportation, or any other charge, or discount, premium or other privilege, or by tying-agreement or other trade understanding, or by calculating "net cost" on purchases other than his "largest single purchase" or otherwise.

SEC. 11 *Enforcement.* Persons violating any provisions of this regulation are subject to the criminal penalties, civil enforcement actions, suits for treble damages and proceedings for suspension of licenses provided by the Emergency Price Control Act of 1942, as amended.

SEC. 12 *Community prices.* From time to time the Office of Price Administration may, by order, fix community (dollars-and-cents) maximum prices for some or all of the food products covered by this regulation.

These orders will specify the locality and classes of retailers for which the community prices will replace maximum prices figured under this regulation. Where the orders do not specify the class and locality of any particular retailer, he shall continue to figure his maximum prices under this regulation.

Article II—Special Pricing Provisions

SEC. 13 *How certain retailers calculate "net cost" in special cases*—(a) *Fresh bananas purchased from importer at port of entry or at auction.* (1) If a retailer purchases fresh bananas from an importer f. o. b. port of entry, his "net cost" shall be calculated by adding $1.00 to the importer's maximum price per hundredweight f. o. b. port of entry (as established by Maximum Price Regulation No. 285 [3]) plus the actual cost of transportation at lowest available common carrier rates to his customary receiving point, which transportation charges shall include freight, icing, heating and messenger service; however, no charge or cost for local trucking or local unloading shall be included. The sum of this computation shall be the retailer's "net cost" and shall be

[2] 8 F.R. 3096, 3849, 4347, 4486, 4724, 4978, 4848.

[3] 8 F.R. 3050.

multiplied by the applicable figure in Appendix A. The product of this multiplication shall then be divided by 100. The resulting figure shall be the retailer's maximum price per pound, which is the unit of the sale designated in Appendix A.

(2) If a retailer purchases fresh bananas at the auction markets at New York, Philadelphia or Baltimore, his "net cost" shall be calculated the same way as in subparagraph (1) above except that he can include freight costs only from the port of entry to the auction market. Costs for ferry service may not be included.

(b) *Eggs, when candled and graded by a retailer.* When a retailer purchases "assorted eggs" and then candles and grades such eggs into the retail grades and sizes or weight classes set forth in Appendix A of this regulation, he shall calculate a maximum price weekly for each resulting grade and size or weight class using at his "net cost" the lowest maximum price established by Maximum Price Regulation No. 333[4] which would apply to sales to a retailer of eggs of that particular grade and size or weight class delivered on the Monday of the week in which calculations are made to a receiving point located in the same city, town, village or hamlet as the customary receiving point for the eggs of the retailer pricing hereunder: *Provided, however,* That before eggs which have been graded by the retailer as extra large AA may be sold as such, they must be certified as such by the United States Department of Agriculture.

(c) *Butter, when sold by a retailer who prints.* When a retailer packages and prints butter he shall calculate a maximum price per pound for each resulting type of print and package and score or grade of butter. In calculating his maximum price for butter of any particular score in a print or package he shall use as his "net cost" the lowest maximum price established under Maximum Price Regulation No. 289[5] which would apply to sales of that particular score or grade of butter in such print or package directly by a creamery to a primary distributor delivered to the city, town, village or hamlet in which the customary receiving point of the retailer pricing hereunder is located, plus ½¢ per pound. When a retailer performs the printing and packaging functions in a butter print division apart from his warehouse or individual store and then delivers the printed or packaged butter to his warehouse, the warehouse shall be considered his customary receiving point, and when it is delivered directly from the butter print division to his store, the store shall be considered his customary receiving point.

SEC. 14 *Limitations in calculating "net cost" in certain cases*—(a) *Butter.* When a retailer purchases butter f. o. b. seller's shipping point, in no case shall "net cost" exceed the maximum price established under Maximum Price Regulation No. 289 for sales to him of that particular grade or score and form of butter delivered to his customary receiving point.

(b) *Cheese.* When a retailer determines "net cost" for cheddar cheese or processed cheddar cheese purchased f. o. b. seller's shipping point, transportation charges shall not exceed the lowest published railroad carlot freight rate per pound of gross weight from Plymouth, Wisconsin, to the retailer's customary receiving point multiplied by 1.15.

SEC. 15 *Additional charges allowed retailers in special cases*—(a) *Eggs, addition allowed for packaging in retail cartons.* When a retailer purchases eggs in containers other than retail cartons of one dozen or a half-dozen each and then packages and sells such eggs in retail cartons of one dozen or a half-dozen each, or, when he purchases eggs in such retail cartons of one dozen or a half-dozen which he has furnished to his supplier, he may increase by whichever of the following amounts is applicable his maximum price calculated under this regulation for eggs sold in such packages:

(1) One cent for each retail carton of a half-dozen eggs.

(2) Two cents for each retail carton of one dozen eggs.

(3) The resulting amount shall be the retailer's maximum price for such packaged eggs. In no case may a retailer make any additions under this paragraph when the person from whom he has purchased the eggs has made a charge for packaging.

(b) *Additional charges allowed for slaughtering and plucking poultry.* A retailer may add to his maximum price otherwise established by this regulation whichever of the following amounts apply:

(1) 10¢ for a bird killed in accordance with the Hebraic dietary laws, if such killing was done by his employee or an agent or contractor engaged and paid by him.

(2) 10¢ for plucking a bird which the retailer buys live and sells live or buys "kosher-killed" and sells "kosher-killed" if such plucking is done by his employee or an agent or contractor engaged and paid by him.

SEC. 16 *How a retailer calculates his maximum prices if his class under this regulation is different than it was under Maximum Price Regulation No. 268 as originally issued.* If, because of the establishment in this regulation of classes of retailers different from those established under Maximum Price Regulation No. 268 as originally issued, a retailer falls within a different class from that in which he was, he must, by Thursday, May 13, 1943, recalculate his maximum prices for all food commodities under this regulation, by using the mark-ups in Appendix A for his new class, and the "net cost" of the "largest single purchase" of each item during the 7 days before May 13, 1943. If he had no such purchase, he shall use the "net cost" he used in calculating his existing maximum price.

SEC. 17 *How a new retailer determines his class and maximum prices under this regulation.* A retailer who opens a new retail store subsequent to May 10, 1943 shall, for the purpose of this regulation be considered a new retailer and be classified as a Class 1 retailer, unless he is *not* an "independent" retail store, in which case he shall be classified as a Class 3 retailer.

At the end of 3 months following the opening of the new retail store, the new retailer must ascertain his gross sales volume for the 3 month period, and multiply that figure by four to arrive at an estimated "annual gross sales". If this figure is an amount that would place the new retailer in a class different from the one in which he is placed by the foregoing paragraph, he must, on the following Thursday and thereafter, use the mark-ups allowed his new class in Appendix A in calculating his maximum prices.

SEC. 18 *Taxes.* Any tax upon or incident to a sale at retail of food covered by this regulation, which the statute or ordinance imposing the tax does not prohibit the seller from stating and collecting separately from the selling price, may be collected by a retailer in addition to his maximum price if he states the tax separately.

SEC. 19 *Mail order sales* When a retailer makes mail order sales, he may add to his maximum prices determined under this regulation his actual express charges or postage to the buyer's address.

Article III—Miscellaneous Provisions

SEC. 20 *How a retailer determines his "annual gross sales"*—(a) *In general.* (1) A retailer's "annual gross sales" shall be his total sales for the calendar year 1942. All sales as shown on his books, except sales made by a restaurant operated in conjunction with his retail store, must be included. A retailer may use his Federal Income Tax Return to get his total sales for all or any part of the calendar year 1942 which is covered by such return. If the retailer owns more than one retail store, he must figure the sales for each store separately, treating each as a separate retailer.

(2) If a retailer was not in operation during the entire year 1942, he must divide his total gross sales from the time he began operation up to May 10, 1943 by the number of weeks in that period. This will give the retailer his weekly average sales. He must then multiply that figure by 52, and take the result as his "annual gross sales".

(b) *In special cases*—(1) *Department stores.* If a retailer is a department store, that is, a store in which the greater volume of sales is general merchandise and not foods, and foods are sold in a separate department or departments, the retailer must determine his class by using only the "annual gross sales" of that food department or departments.

[4] 8 F.R. 2488, 3002, 3070, 5342.

[5] 7 F.R. 10996; 8 F.R. 490, 1458, 1885, 1972, 3252, 3327, 4335, 4513, 4337, 4338, 4918.

Sales by a restaurant are not to be considered sales of food in a separate department.

(2) *Stores in which more than one retailer operates.* (i) If a retailer sells food products in a retail store in which there are other food retailers, none of whom sells a complete line of the same general class of food, he must find his "annual gross sales" by taking the combined "annual gross sales" of *all* the food retailers in that store.

(ii) If a retailer sells food products in a retail store in which more than one retailer sells a complete line of the same general class of food, he shall be considered a separate retailer and must find his "annual gross sales" by using only his own sales.

SEC. 21 *Transfer of business and stock in trade.* If, after May 10, 1943, a person acquires in any way the business, assets, and stock in trade of any retail store covered by this regulation and carries on the business, or continues to deal in the same type of food products in that same store, his maximum prices shall be the same as those of the former owner if no transfer had taken place. The new owner must keep all the records needed to verify his maximum prices. The former owner must either preserve and make available to the new owner, or give him, all the records of his transactions before the new owner acquired the store which the new owner may need to comply with the record provisions of this regulation.

If the transfer changes the business from one class of retail store to another, the new owner's maximum prices shall be those for the class of retailer to which he belongs under this regulation. (For example: If a person acquires the business of a Class 1 retail store, and, by virtue of the new ownership, it becomes a Class 3 retail store, the new owner's maximum prices must be figured as a Class 3 retailer using the Class 3 markups, and the same "net cost" as the former owner used in establishing his maximum prices.)

SEC. 22 *Relationship between this regulation and the General Maximum Price Regulation.* The following provisions of the General Maximum Price Regulation shall continue to be applicable to every retailer selling the food commodities covered by this regulation.

(a) Determination of maximum prices by sellers at retail operating more than one retail establishment (§ 1499.4a).

(b) Sales for export (§ 1499.6).

(c) Current records (§ 1499.12).

(d) Sales slips and receipts (§ 1499.14).

SEC. 23 *Geographical applicability.* The provisions of this regulation shall apply to the forty-eight states of the United States and the District of Columbia.

SEC. 24 *Definitions.* Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942, as amended, and in §§ 1429.19 and 1429.21 of Revised Maximum Price Regulation No. 269 [6] (poultry), § 1351.1014 of Maximum Price Regulation No. 271 [7] (potatoes and onions), § 1351.1264 of Maximum Price Regulation No. 285 (imported fresh bananas), and §§ 1351.1519 (f) and 1351.1520 (m) of Maximum Price Regulation No. 289 (dairy products), shall apply to terms used herein whenever applicable.

[6] 7 F.R. 10708, 10864, 11118; 8 F. R. 567, 850, 878, 2289, 3316, 3419, 3792.

[7] 7 F.R. 9179, 10715; 8 F.R. 233, 1748, 1981, 3397, 3733, 3853, 4725, 4718, 5172, 5570.

APPENDIX A

FIGURES TO BE USED BY RETAILERS IN DETERMINING MAXIMUM PRICES UNDER THIS REGULATION (NEW MAXIMUM PRICES ARE REQUIRED AFTER THE EFFECTIVE DATE OF THIS REGULATION AND MUST BE CHANGED EACH WEEK WHENEVER A RETAILER'S "NET COST" INCREASES OR DECREASES)

Food commodity [1]	Figures to be multiplied by "net cost" of items in determining maximum prices under this regulation				
	"Independent" retailer with "annual gross sales"		Class 3—retailers, other than "independent", with annual gross sales under $250,000	Class 4—any retailer with "annual gross sales" of $250,000 or more	Unit of sale for which maximum selling price must be calculated
	Class 1—under $50,000	Class 2—$50,000 but less than $250,000			
1. White potatoes	1.33	1.30	1.30	1.28	5 lbs.
2. Dry onions	1.40	1.40	1.40	1.35	3 lbs.
3. Poultry sold as purchased	1.21	1.21	1.20	1.20	1 lb.
Bought dressed and sold dressed, bought drawn and sold drawn, bought quick-frozen and sold quick-frozen, bought Kosher-killed and sold Kosher-killed, bought Kosher-dressed-and-plucked and sold Kosher-dressed-and-plucked, bought split and sold split, bought cut-up and sold cut-up (boxed and other pack).					
4. Poultry bought live and sold dressed weight basis (multiply live cost per pound by applicable figure in table. This establishes selling price per pound, dressed weight).	1.38	1.38	1.36	1.36	1 lb.
(No additional markups are allowed for drawing and cutting up.) When poultry is bought live, dressed or drawn and is sold split or cut-up, the total price received through the sale of the cut-up parts of any bird shall not exceed the amount which could be received through the sale of the whole bird on a live weight basis if bought live, or on a dressed weight basis if bought dressed, or on a drawn basis if bought drawn. When poultry is bought live, dressed, and sold drawn, ceiling price must be determined on a dressed weight basis.					
5. Fresh bananas bought on the stem	1.43	1.43	1.34	1.34	1 lb.
6. Fresh bananas bought in hands	1.34	1.34	1.25	1.25	1 lb.
7. Cheese	1.27	1.27	1.24	1.22	1 lb. or 1 pkg.
8. Butter	1.10	1.10	1.03	1.03	1 lb.
9. Fresh citrus fruit	1.39	1.39	1.36	1.36	5 lbs. or 1 doz.[2]
10. Eggs	1.17	1.15	1.14	1.12	1 dozen.
11. Frozen fish and seafood	1.28	1.28	1.26	1.26	1 lb. or 1 pkg.
12. Fresh vegetables					
(a) Cabbage	1.40	1.40	1.40	1.40	1 lb. or 1 head.
(b) Carrots	1.40	1.40	1.40	1.40	1 lb. or 1 bunch.
(c) Lettuce	1.40	1.40	1.40	1.40	1 lb. or 1 head.
(d) Peas	1.40	1.40	1.40	1.40	1 lb.
(e) Snap beans	1.40	1.40	1.40	1.40	1 lb.
(f) Spinach	1.40	1.40	1.40	1.40	1 lb. or 1 pkg.
(g) Tomatoes	1.40	1.40	1.40	1.40	1 lb. or 1 pkg.

[1] Separate price must be computed for each grade, kind, size, and variety.

[2] The unit of sale for fresh citrus fruit shall be 5 pounds or 1 dozen, except that for grapefruit it shall be 1 pound or 1 grapefruit.

(b) (1) *Example of how to compute new maximum prices.* An "independent" retailer must secure a new maximum price for round white potatoes to be used during the period May 20 (Thursday) to May 26 (Wednesday), inclusive. He customarily buys most of his potatoes from a jobber who delivers. His largest single purchase of white potatoes from his customary supplier during the seven days preceding May 20 (May 13 to May 19, inclusive) was 15 100-pound bags, at a cost of $4.20 per bag. This "independent" retailer had "annual gross sales" of $18,000 in 1942.

Therefore, he takes the applicable figure for potatoes as shown in the table for retailers in Class I ("Independent" retailers with "annual gross sales" under $50,000), which in this case is 1.33, and multiplies it by the cost per hundred-pound bags. He next divides the number of pounds in the bag (which in this case is 100) by the designated number of pounds in the unit of sale, (5 lbs. for white potatoes), and this new figure (20) is then divided into the $5.5860 which he obtained by multiplying his cost by the multiplier for his class. The resulting figure of $0.28 (rounding off to the nearest cent) is his ceiling price for 5 pounds of white potatoes.

EXAMPLE

Invoice cost (from Jobber) per 100-lb. bag	$4.20	
Multiply by applicable figure for potatoes sold by retailers in Class I	1.33	
	1260	
	1260	
	420	
	5.5860	
Divide by number of times designated unit of sale (5 lbs.) goes into unit of purchase (100 lbs.)	20)$5.5860	($.2793
	40	
	168	
	140	
	186	
	180	
	60	
	60	

The price ($0.28) is the retailer's new ceiling on white potatoes in 5-lb. quantities—the designated unit of sale.

If this retailer wishes to sell 3-lb. quantities, he must reduce the ceiling price calculated above, as follows:

He takes the ceiling price calculated for the designated unit of sale ($0.28 for 5 lbs.) and multiplies it by the number of pounds in the unit he wishes to sell (which in this case is 3). This new figure is then divided by the number of pounds in the designated unit of sale (5), and the figure arrived at is his new ceiling price for white potatoes to be sold by him in units of 3 pounds.

$.28 x 3=$.84
5)$.84 ($.168
($.17 is the maximum price)

(2) *Additional instructions.* (i) A maximum price must be calculated before making a sale of any grade of the food commodities included in this appendix after the effective date of this regulation.

(ii) A new maximum price must be calculated on the first Thursday following a change, either up or down, in "net cost" as defined in this regulation. If "net cost" does not change, no new maximum price need be calculated.

(iii) "Net cost" shall be based on the amount paid for the unit of purchase of the retailer's largest single purchase from his customary type of supplier. "Largest single purchase" means the purchase of the greatest quantity which was made during the seven days before the day of week on which the maximum price must be calculated.

(c) *Definitions of food commodities on which retailers must calculate new maximum prices under this regulation.* (1) "White potatoes" means all white potatoes used for human consumption or for seed. Seed potatoes which are purchased as such shall not be sold except as seed potatoes for planting, and must be clearly tagged or labelled as seed potatoes for planting.

(2) "Dry onions" means all dry onions used for human consumption. Each grade and variety shall be considered a separate item and priced separately.

(3) (4) "Poultry" means all chickens, ducks, geese, and turkeys, in any form, excluding "started" poultry sold for breeding purposes, canned poultry, and cooked or smoked poultry. "Dressed poultry" means poultry which has been killed, bled, and plucked. "Kosher-killed poultry" means poultry which has been killed and bled in accordance with the requirements of the Hebraic dietary laws, and is identified as kosher-killed by a stamp or tag on each bird.

(5) (6) "Fresh bananas" means the imported fruit of the banana tree. Bananas from different countries of origin such as, but not limited to Costa Rica, Honduras, Guatemala and Mexico, shall be considered different "kinds" of bananas.

(7) "Cheese" means all varieties and kinds of natural and processed cheese, bulk or packaged, including cottage cheese and cheese products, the ingredients of which are composed of more than 50% cheese by weight.

Excluded is Cheddar cheese bought by a retailer for the purpose of aging or curing, and which remains in his possession under controlled temperature for at least 6 months and is sold by him 6 months or more after it is received by him for the purpose of aging or curing. Maximum price for this cheese shall be determined under the provisions of Maximum Price Regulation No. 280 until June 1, 1943. After that date sales of this cheese shall be priced under this Revised Maximum Price Regulation No. 208.

(8) "Butter" means all packaged and bulk butter. "Packaged butter" means butter received by a retailer, at his customary receiving point, packaged in paper cartons or other material in units of uniform weight which units are sold directly to the consumer. "Bulk butter" means butter sold to the consumer in amounts ladled out of tubs or other large containers.

(9) "Fresh citrus fruit" means all fresh citrus fruits including but not limited to oranges, lemons, limes, grapefruit and tangerines. Maximum prices shall be calculated for each variety, each size, and for fruit from different areas. Varieties shall be oranges, lemons, limes, temple oranges, tangerines, white seeded and pink seeded and white and pink seedless grapefruit and ruby red grapefruit. Different areas are California, Arizona, Texas, Florida—Indian River section and all other sections of Florida.

(10) "Eggs" or "shell hen eggs" means all shell eggs of the fowl known as the domestic or barnyard hen used for human consumption. Maximum prices shall be calculated and posted for each grade and size or weight class of eggs. The grade and size or weight class shall be clearly posted with the maximum price. Eggs shall be sold at retail only in retail grades. Retail grades of eggs are: grade AA, grade A, grade B, grade C, "assorted eggs", dirty, and checked. Sizes and weight classes are: jumbo, extra large, large, medium, and small. The specifications and standards for grades, quality, and sizes and weight classes of shell eggs promulgated by the United States Department of Agriculture in the publications entitled "Specifications for Official United States Standards for Quality of Individual Shell Eggs" and "Tentative U. S. Standards and Weight Classes for Consumer Grades for Shell Eggs", including any amendments thereto or revisions thereof, heretofore or hereafter to be issued, shall be the specifications and standards for grades and sizes or weight classes of all shell hen eggs sold at retail for which maximum prices are established by this regulation. "Assorted eggs" means edible shell hen eggs which have not been graded, have a net weight of not less than 43 pounds per case or equivalent, and contain a total of not more than 20% of dirty and checked eggs.

(11) "Frozen fish and seafood" means any fish or seafood which has been artificially frozen or frozen by exposure to the elements for preservation.

(12) "Fresh vegetables": (a) "Cabbage" means all solid headed cabbage, including Red and Savoy. Excluded are Chinese cabbage, collards, cauliflower, and brussels sprouts. All cabbage shall be considered as one item.

(b) "Carrots". Bunched carrots, and topped or clipped carrots, shall be considered separate items and priced separately.

(c) "Lettuce" means all head or leaf lettuce, including, but not limited to, Iceberg, Big Boston and Romaine. Excluded are escarole, chicory, and endive. Head lettuce and leaf lettuce shall be considered separate items and priced separately.

(d) "Peas, green" shall not include Chinese peas. All green peas shall be considered one item.

(e) "Snap beans" shall not include limas and English, Fava, and Italian broad beans. Snap beans include green beans and wax beans which shall be considered separate items and priced separately.

(f) "Spinach" means all flat and curly leaf spinach, excluding New Zealand, or other greens. Separate items shall be "washed and packaged" spinach, and all other spinach, and must be priced separately.

(g) "Tomatoes". Each size, kind, and variety shall be considered a separate item and priced separately.

Effective Date

This regulation shall become effective on May 10, 1943 except as to the new mark-ups established for Item 2, Dry onions, Items 3 and 4, Poultry, and Item 12, Fresh vegetables, in Appendix A, for which it shall become effective on May 13, 1943.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7390; Filed, May 10, 1943; 4:59 p. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[MPR 271,[1] Amendment 12]

CERTAIN PERISHABLE FOOD COMMODITIES, SALES EXCEPT AT RETAIL

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith,

[1] 7 F.R. 9179, 10715; 8 F.R. 233, 1743, 1931, 3397, 3733, 3853, 4725, 4718, 5172, 5570.

has been filed with the Division of the Federal Register.*

Maximum Price Regulation 271 is amended in the following respects:

1. Paragraph (f) is added to § 1351.-1003 to read as follows:

(f) The maximum price for sales of white flesh potatoes at an auction market shall be the net cost per cwt., delivered at such market, multiplied by 1.07. "Net cost" means the amount paid for the potatoes delivered at the customary receiving point of the auction market less all discounts allowed except the discount for prompt payment.

This amendment shall become effective May 10, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

Approved:

JESSE W. TAPP,
Acting Administrator,
War Food Administration.

[F. R. Doc. 43-7377; Filed, May 10, 1943; 4:47 p. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[MPR 292,[1] Amendment 3]

SALES OF CITRUS FRUITS BY PACKERS, BROKERS, AUCTION MARKETS, TERMINAL SELLERS AND INTERMEDIATE SELLERS

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 135, 543, 2869, 3367.

Maximum Price Regulation 292 is amended in the following respects:

1. Section 1351.1414 (a) (9) is amended to read as follows:

(9) "Oranges" shall include all oranges except tangerines, tangelos, Temple oranges, and King oranges.

2. Section 1351.1416 is amended to read as follows:

§ 1351.1416 *Appendix A: Maximum prices of packers, f. o. b. packing house.*

(a) ORANGES, TANGERINES, TEMPLE ORANGES, AND KING ORANGES

[Maximum prices in dollars per unit]

State or area	Variety	Seasons (all dates inclusive)	Standard wooden box						Bruce boxes packed unwrapped		½ strap box [2]	⅝ bushel standard nailed box	Fiberboard boxes		1 bushel basket	Bags					Bulk, 1⅗ bushel [3]	Maximum price per pound [1]
			Packed wrapped	Packed 2 layers wrapped	Packed unwrapped	Blind pack	Market pack	Loose	1⅗ bushel	⅘ bushel			1⅗ bushel corrugated box	⅘ bushel corrugated box		1⅗ bushel	½ box (⅗) bu.	¼ box (⅗) bu.	8 pounds	5 pounds		
1. California, Arizona	All (including tangerines).	Nov. 16 to April 30	$3.43	$3.40	$3.38	$3.40	$2.68	$2.41			$1.82										$2.26	$0.035
		May 1 to Nov. 15	3.99	3.96	3.94	3.96	3.13	2.97			2.10										2.82	.045
2. Florida: Indian River.	Tangerines	Beginning to Dec. 31			4.00				$3.96	$2.66	2.14	$2.09	$4.15	$2.19	$2.63						3.68	.04
		Jan. 1 to Feb. 28			3.72				3.68	1.92	2.00	1.95	3.87	2.05	2.46						3.40	.035
		Mar. 1 to end			3.92				3.88	2.03	2.11	2.05	4.07	2.15	2.58						3.60	.04
3. Florida: Indian River.	Temples and Kings	Beginning to Nov. 15			3.98				3.94	2.05	2.13	2.08	4.13	2.18	2.62						3.66	.04
		Nov. 16 to Feb. 28			4.14				4.10	2.13	2.21	2.16	4.29	2.26	2.72						3.82	.04
		Mar. 1 to end			4.28				4.24	2.20	2.28	2.23	4.43	2.33	2.81						3.96	.04
4. Florida: Indian River.	Oranges	Beginning to Nov. 15	3.39	3.35	3.31				3.27				3.46		2.20	$3.17	$1.64	$0.84	$0.345	$0.225	2.97	.03
		Nov. 16 to Feb. 28	3.54	3.50	3.46				3.42				3.61		2.29	3.32	1.71	.88	.360	.235	3.12	.035
		Mar. 1 to end	3.69	3.65	3.61				3.57				3.76		2.39	3.47	1.79	.92	.375	.245	3.27	.035
5. Florida: Interior	Tangerines	Beginning to Dec. 31			3.64				3.60	1.89	1.97	1.91	3.79	2.01	2.41						3.32	.035
		Jan. 1 to Feb. 28			3.38				3.34	1.75	1.83	1.78	3.53	1.88	2.24						3.06	.03
		Mar. 1 to end			3.58				3.54	1.85	1.93	1.88	3.73	1.98	2.37						3.26	.035
6. Florida: Interior	Temples and Kings	Beginning to Nov. 15			3.98				3.94	2.05	2.13	2.08	4.13	2.18	2.62						3.66	.04
		Nov. 16 to Feb. 28			3.68				3.64	1.90	1.98	1.93	3.83	2.03	2.43						3.36	.035
		Mar. 1 to end			4.04				4.00	2.08	2.16	2.11	4.19	2.21	2.66						3.72	.04
7. Florida: Interior	Oranges	Beginning to Nov. 15	3.39	3.35	3.31				3.27				3.46		2.20	3.17	1.64	.84	.345	.225	2.97	.03
		Nov. 16 to Feb. 28	3.09	3.05	3.01				2.97				3.16		2.01	2.87	1.49	.77	.315	.210	2.67	.03
		Mar. 1 to end	3.45	3.41	3.37				3.33				3.52		2.24	3.23	1.67	.86	.355	.230	3.03	.03
8. Texas	Tangerines	Beginning to Nov. 15			3.92				3.88	2.02	2.10	2.05	4.07	2.15	2.58						3.60	.04
		Nov. 16 to Mar. 15			3.70				3.66	1.91	1.99	1.94	3.85	2.04	2.45						3.38	.035
		Mar. 16 to end			4.02				3.98	2.07	2.15	2.10	4.17	2.20	2.65						3.70	.04
9. Texas	Temples and Kings	Beginning to Nov. 15			3.96				3.92	2.04	2.12	2.07	4.11	2.17	2.61						3.64	.04
		Nov. 16 to Feb. 28			3.74				3.70	1.93	2.01	1.96	3.89	2.06	2.47						3.42	.035
		Mar. 1 to end			4.04				4.00	2.09	2.17	2.12	4.19	2.22	2.66						3.72	.04
10. Texas	Oranges	Beginning to Nov. 15	3.36	3.32	3.28				3.24				3.43		2.18	3.14	1.62	.84	.345	.225	2.94	.03
		Nov. 16 to Feb. 28	3.14	3.10	3.06				3.02				3.21		2.04	2.92	1.51	.78	.320	.210	2.72	.03
		Mar. 1 to end	3.46	3.42	3.38				3.34				3.53		2.24	3.24	1.67	.86	.355	.320	3.04	.03

[1] Maximum price per pound to be used in computing maximum prices for any container not listed in the table above. For any oranges, tangerines, king oranges or temple oranges which are sold in containers other than those specifically set forth above, the maximum price shall not exceed the bulk price per pound stated above.

[2] For California applies to ½ standard box.

[3] For California unit of measure is 1⅗ bushel.

(b) GRAPEFRUIT

[Maximum prices in dollars per unit]

State or area	Variety	Seasons all dates inclusive	Standard wooden box					Bruce box packed unwrapped	1⅗ bushel fiberboard corrugated box	Bags				Bulk 1⅗ bushel [2]	Maximum price per pound [1]
			Packed wrapped	Packed 2 layers wrapped	Packed unwrapped	Market pack	Loose	1⅗ bushel		1⅗ bushel	½ box (⅗ bushel)	¼ box (⅖ bushel)	10 pound		
1. California, Arizona	White	June 1 to Oct. 31	$2.82	$2.80	$2.77	$2.31	$2.04							$1.80	$0.03
		Nov. 1 to May 31	2.23	2.20	2.23	1.85	1.60							1.35	.02
2. Arizona	Pink	All	2.52	2.50	2.47	2.04	1.84							1.69	.025
3. Florida, Indian River	White, seeded	Beginning to Nov. 15	2.92	2.85	2.81			$2.70	$2.96	$2.60	$1.40	$.72	$0.420	2.40	.03
		Nov. 16 to Feb. 28	2.60	2.53	2.49			2.47	2.64	2.37	1.24	.64	.375	2.17	.025
		Mar. 1 to end	2.83	2.76	2.72			2.70	2.87	2.60	1.35	.70	.405	2.40	.03
4. Florida, Indian River	Pink, seeded	Beginning to Nov. 15	3.27	3.20	3.16			3.14	3.31	3.04	1.57	.81	.470	2.84	.035
		Nov. 16 to Feb. 28	2.95	2.88	2.84			2.82	2.99	2.72	1.41	.73	.425	2.52	.03
		Mar. 1 to end	3.18	3.11	3.07			3.05	3.22	2.95	1.53	.70	.465	2.75	.03
5. Florida, Indian River	White, seedless	Beginning to Nov. 15	3.40	3.33	3.29			3.27	3.44	3.17	1.64	.84	.490	2.97	.035
		Nov. 16 to Feb. 28	3.08	3.01	2.97			2.95	3.12	2.85	1.48	.76	.440	2.65	.03
		Mar. 1 to end	3.32	3.25	3.21			3.19	3.36	3.09	1.60	.82	.475	2.89	.035
6. Florida, Indian River	Pink, seedless	Beginning to Nov. 15	3.51	3.44	3.40			3.38	3.55	3.28	1.69	.87	.505	3.08	.035
		Nov. 16 to Feb. 28	3.10	3.12	3.08			3.06	3.23	2.96	1.53	.70	.460	2.76	.03
		Mar. 1 to end	3.42	3.35	3.31			3.29	3.46	3.19	1.65	.85	.490	2.99	.035
7. Florida Interior	White, seeded	Beginning to Nov. 15	2.63	2.60	2.52			2.50	2.67	2.40	1.25	.65	.380	2.20	.025
		Nov. 16 to Feb. 28	2.31	2.24	2.20			2.18	2.35	2.03	1.03	.67	.330	1.88	.02
		Mar. 1 to end	2.54	2.47	2.43			2.41	2.58	2.31	1.20	.63	.365	2.11	.025
8. Florida Interior	Pink, seeded	Beginning to Nov. 15	2.82	2.75	2.71			2.69	2.86	2.59	1.35	.70	.405	2.39	.03
		Nov. 16 to Feb. 28	2.60	2.43	2.39			2.37	2.54	2.27	1.10	.62	.360	2.07	.025
		Mar. 1 to end	2.73	2.66	2.62			2.60	2.77	2.50	1.30	.68	.390	2.30	.025
9. Florida Interior	White, seedless	Beginning to Nov. 15	2.82	2.75	2.71			2.69	2.86	2.59	1.35	.70	.405	2.39	.03
		Nov. 16 to Feb. 28	2.60	2.43	2.39			2.37	2.54	2.27	1.10	.62	.360	2.07	.025
		Mar. 1 to end	2.73	2.66	2.62			2.60	2.77	2.50	1.30	.68	.390	2.30	.025
10. Florida Interior	Pink, seedless	Beginning to Nov. 15	3.03	2.96	2.95			2.93	3.10	2.83	1.47	.70	.440	2.63	.03
		Nov. 16 to Feb. 28	2.74	2.67	2.63			2.61	2.78	2.51	1.31	.63	.395	2.31	.025
		Mar. 1 to end	2.67	2.60	2.56			2.54	2.71	2.44	1.42	.74	.425	2.54	.03
11. Texas	White	Beginning to Nov. 15	2.61	2.54	2.50			2.48	2.65	2.38	1.24	.65	.375	2.18	.025
		Nov. 16 to Feb. 28	2.29	2.22	2.18			2.16	2.33	2.03	1.03	.57	.330	1.88	.02
		Mar. 1 to end	2.52	2.45	2.41			2.39	2.56	2.29	1.20	.63	.360	2.09	.025
12. Texas	Pink, seeded	Beginning to Nov. 15	2.70	2.72	2.63			2.61	2.83	2.71	1.33	.69	.400	2.39	.025
		Nov. 16 to Feb. 28	2.47	2.40	2.36			2.34	2.51	2.24	1.17	.61	.355	2.04	.025
		Mar. 1 to end	2.70	2.63	2.59			2.57	2.74	2.47	1.30	.67	.390	2.27	.025
13. Texas	Pink, seedless	Beginning to Nov. 15	3.01	2.93	2.92			2.90	3.07	2.80	1.45	.75	.435	2.60	.03
		Nov. 16 to Feb. 28	2.71	2.64	2.60			2.58	2.75	2.49	1.29	.67	.390	2.23	.025
		Mar. 1 to end	2.94	2.87	2.83			2.81	2.98	2.71	1.41	.73	.420	2.51	.03
14. Texas	Ruby red	Beginning to Nov. 15	3.37	3.30	3.23			3.21	3.41	3.14	1.62	.84	.485	2.94	.035
		Nov. 16 to Feb. 28	3.05	2.98	2.94			2.92	3.09	2.82	1.46	.76	.440	2.62	.03
		Mar. 1 to end	3.23	3.21	3.17			3.15	3.32	3.05	1.58	.82	.470	2.85	.035

[1] Maximum price per pound to be used in computing maximum prices for any container not listed in the table above. For any grapefruit which are sold in containers other than those specifically set forth above, the maximum price shall not exceed the bulk price per pound stated above.

[2] For California, unit of measure is 1⅗ bushels.

(c) LEMONS

Variety	Seasons	Standard wooden box					
		Packed wrapped	Packed unwrapped	Blind pack	Market pack	Loose	Bulk per lb.
California	Nov. 1-Apr. 30	$4.80	$4.70	$4.81		$3.51	[1]$0.05
All	May 1-Oct. 31	5.35	5.25	5.30		4.00	.055

[1] For lemons sold in containers other than those specified above the maximum prices shall not exceed 5 cents per lb. for the season Nov. 1-Apr. 30 and 5½ cents per lb. for the period May 1-Oct. 31.

This amendment shall become effective May 10, 1943.

(Pub. Laws 421 and 729, 77th Cong., E.O. 9250, E.O. 9328)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

Approved: May 7, 1943.

CHESTER C. DAVIS,
Administrator,
War Food Administration.

[F. R. Doc. 43-7378; Filed, May 10, 1943; 4:47 p. m.]

PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS

[RO 3,[1] Amendment 59]

SUGAR RATIONING REGULATIONS

A rationale accompanying this amendment, issued simultaneously herewith,

[1] 7 F.R. 2906, 3242, 3783, 4545, 4918, 5103, 5301, 6034, 6473, 6828, 6937, 7269, 7321, 7510, 7557, 8403, 8655, 8710, 8730, 8809, 8830, 8931, 9043, 9396, 9460, 9899, 10017, 10258, 10550, 10945; 8 F.R. 106, 203, 445, 620, 1028, 1204, 1289, 2030, 2163, 2432, 2433, 2675, 2768, 3170, 3180, 3522, 4484, 4519, 4644, 4930, 4977, 5318.

has been filed with the Division of the Federal Register.*

Rationing Order No. 3 is amended in the following respects:

1. Section 1407.21 (c) (31) is added to read as follows:

(31) "Coupon" means a sugar allowance coupon on OPA Form No. R–324, OPA Form R–325, OPA Form No. R–326, or OPA Form No. R–327.

2. Section 1407.71 is amended to read as follows:

§ 1407.71 *Home processing and preserving for use.* (a) The board may permit a person registered as a consumer in conformity with Rationing Order No. 3 to obtain sugar for the purpose of producing processed foods from fresh fruits for use, in accordance with sections 26.2, 26.5, and 26.6 of Ration Order 13 (or for making the gifts permitted by these sections), or for making jams, jellies, preserves, or fruit butters.

(b) Sugar for the purpose of producing processed food from fresh fruits, for such use, may be obtained at the rate of not more than one pound of sugar per four quarts (or eight pounds) of finished processed foods. Sugar for the purpose of making jams, jellies, preserves, or fruit butters may be obtained by a consumer in an amount not to exceed five pounds. However, the total amount of sugar which may be obtained by a consumer for both these purposes, for the period from March 1, 1943, to February 29, 1944, inclusive, shall not exceed 25 pounds.

(c) Applications for sugar in accordance with this section shall be made in writing to the board by one adult member of a family unit for all members of the unit (or, if there is no adult member, by the oldest member or by a responsible person) or by a consumer not a member of a family unit for himself (or, if a minor, not self-supporting, by his parent or guardian or by a responsible adult). The applicant shall either in person or by mail present to the board the books issued to the persons on whose behalf the application is made. In addition, the applicant shall in his application state (1) the number of quarts or pounds of processed foods the applicant, and the members of the family unit of which he is a member for whom application is made, intends to produce for such use from fresh fruit; (2) the amount of sugar to be used in the making of jams, jellies, preserves, and fruit butters; and (3) such other information as the board may require. The board shall note on the cover of the book of each person for whom application is made the amount of sugar allowed to such person under this section and the date the allowance is granted.

(d) The board shall grant the application to the extent permitted under the provisions of this Section and shall issue coupons or a certificate in weight value equal to the amount of sugar allowed.

(e) Sugar obtained pursuant to this section shall be used only in the quantities, during the period, and for the purposes for which it was allowed, and the processed foods produced therewith shall be used only as permitted by sections 26.2, 26.5, and 26.6 of Ration Order 13.

3. Section 1407.71a is added to read as follows:

§ 1407.71a *Home processing for sale.* (a) The board may permit a person registered as a consumer to obtain sugar to be used for the purpose of producing from fresh fruits home processed foods which he intends to transfer for points in accordance with section 26.3 of Ration Order 13. Such sugar may be obtained at the rate of not more than one pound of sugar per four quarts (or eight pounds) of finished home processed foods. However, the total amount of sugar obtained for such purposes, for the period from March 1, 1943 to February 29, 1944, inclusive, shall not exceed 250 pounds and no more than one such allowance shall be granted to a family unit.

(b) Applications for sugar in accordance with this section shall be made on OPA Form R–315. The applicant shall state (1) the number of quarts (or pounds) of home processed foods he intends to produce from fresh fruits; (2) the amount of sugar applied for; (3) the address at which the processing will be done; (4) the type of facilities to be used; (5) whether any member of the family unit of which he is a member has received an allowance under this section; and (6) such other information as the board may require.

(c) The board shall grant the application to the extent permitted under the provisions of this section and shall issue a certificate in weight value equal to the amount of sugar allowed.

(d) The applicant shall make the reports and keep the records required of him by Ration Order 13.

(e) Sugar obtained pursuant to this section shall be used only in the quantities, during the period, and for the purposes for which it was allowed and the home processed foods produced with such sugar shall be delivered, sold, or transferred by the applicant only in accordance with the provisions of Ration Order 13.

4. Section 1407.142a is added to read as follows:

§ 1407.142a *Use of coupons.* Notwithstanding anything to the contrary contained in Rationing Order No. 3:

(a) Whenever Rationing Order No. 3 authorizes the delivery of sugar to a consumer upon the surrender of stamps or certificates, such delivery may be made upon the surrender by the consumer of coupons equal in weight value to the amount of sugar delivered and bearing the serial number of the consumer's book. The consumer's book shall be presented to the person making the delivery at the time the coupons are surrendered and such person shall make delivery only if the coupons bear the same serial numbers as the book.

(b) A coupon authorizes the delivery of sugar to a consumer in an amount equal to the weight value of such coupon, until February 29, 1944. A coupon received in accordance with Rationing Order No. 3 by a registering unit, which is neither a depositor nor required to be one, authorizes the registering unit to take delivery of sugar in an amount equal to the weight value of the coupon until March 31, 1944. A coupon surrendered to a depositor shall be valid for deposit in the account of such depositor until April 10, 1944.

(c) Whenever a registering unit, primary distributor, or Collector of Customs receives a coupon in accordance with Rationing Order No. 3 it may deliver sugar against such coupon and surrender or deposit such coupon for the same purposes and with the same effect as if such coupon were a stamp, subject, however, to the provisions of this section.

(d) A registering unit, primary distributor, or Collector of Customs to whom coupons are surrendered by a consumer shall enclose such coupons in an envelope and shall surrender or deposit them in accordance with the procedure prescribed for stamps or coupons by General Ration Order 7. Such coupons shall be received, surrendered, or deposited, and sugar may be delivered against them, by a registering unit, primary distributor, or Collector of Customs, only in the same manner, for the same purpose and with the same effect as such registering unit, primary distributor, or Collector of Customs could receive, surrender, deposit, or deliver sugar against, stamps of equal weight value.

5. Section 1407.148 is amended to read as follows:

§ 1407.148 *Destroyed, mutilated, or stolen certificates, stamps, and coupons.* (a) A certificate that is torn or mutilated shall be valid only if more than one-half thereof remains legible, and such remaining portion clearly evidences the date of the certificate, its weight value, and the name of the holder. A coupon that is torn or mutilated shall be valid only if more than one-half thereof remains legible and such remaining portion clearly evidences its weight value and the serial number of the book of the consumer to whom it was issued. A stamp that has been torn or mutilated is valid in the hands of the consumer only if more than one-half remains undetached in the book.

(b) If a certificate, stamp, or coupon held by a registering unit or institutional user establishment is lost, destroyed, or stolen, or becomes invalid because of mutilation, the person entitled to such stamp, coupon, or certificate may apply for a new coupon or certificate in the weight value equal to that of the replaced stamp, coupon, or certificate. The application therefor shall be made to the board upon OPA Form No. R–315 by such person or his authorized agent. The board, in a proper case, shall grant the application.

(c) If a certificate or coupon held by a consumer is lost, destroyed, or stolen, the consumer may apply for a replacement certificate or coupon. The application therefor shall be made to the board upon OPA Form No. R–315 by the consumer personally or by an adult member of his family unit or by an authorized agent. The board, in a proper case, shall grant the application.

*Copies may be obtained from the Office of Price Administration.

This amendment shall become effective May 15, 1943.

NOTE: All reporting and record-keeping requirements of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Pub. Law 421, 77th Cong., Executive Order 9125, 7 F.R. 2709; E.O. 9280, 7 F.R. 10179; WPB Dir. No. 1 and Supp. Dir. No. 1E, 7 F.R. 562, 2965; Food Dir. No. 3, 8 F.R. 2005)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7384; Filed, May 10, 1943; 4:49 p. m.]

PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS

[RO 13,* Amendment 27]

PROCESSED FOODS

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.*

A new Article XXVI containing sections 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, and 26.8, is added to read as follows:

Article XXVI—Home Processed Foods

SEC. 26.1 *Explanation of terms "home processor" and "home processed foods"*—(a) *Processed foods produced in kitchen are home processed foods.* Processed foods produced in a "kitchen" are "home processed foods".

(1) A person is considered to "produce" home processed foods, for the purposes of this Article, if he:

(i) Takes an active part in the processing of such foods; or

(ii) Contributes the fruits or vegetables for processing by others; or

(iii) Contributes facilities, such as steamers, pressure cookers, or the kitchen, to be used by others to produce such foods.

(2) A "kitchen" is a place principally used for the preparation of meals, or for the demonstration of such preparation (such as a kitchen in a school or in a home economics center).

SEC. 26.2 *Person may consume home processed foods he produces and may give away limited amounts*—(a) *Points need not be given up for use.* A person may consume home processed foods he produces, and may let members of his "family unit", and others who eat at his table or on a farm he operates, consume them, without giving up points.

(1) A "family unit" consists of all persons related by blood, marriage, or adoption, who regularly reside in the same household.

(b) *Gifts.* He and the members of his family unit may give (but not sell) such foods to any other person without receiving points, but no more than fifty (50) quarts (or one hundred (100) pounds) of such foods per member may be given away point-free by the family unit in any calendar year. (One quart of processed foods is considered the equivalent of two pounds.)

SEC. 26.3 *A person may sell home processed foods he produces*—(a) *He may sell only for points.* A person may not sell or transfer home processed foods produced by him (except for those he is permitted to give away point-free under section 26.2 (b)) unless he gets points equal to the point value of the foods so transferred. He must also get points for any gifts made in excess of the amount permitted by section 26.2 (b). (The point value of home processed foods is fixed by Revised Supplement No. 1 to this order.)

(b) *He must keep records and surrender points to board.* For this purpose he need not register as a processor or make reports, but must keep a record of any transfer he makes, showing the amount and date of the transfer, and the name and address of the person to whom the transfer is made. If he makes any transfers of home processed foods for points during any month, he must give up the points to his board, on or before the tenth day of the next month.

SEC. 26.4 *Person producing processed foods in place other than a "kitchen" may get permission to treat them as home processed foods*—(a) A person may produce processed foods in a place not used principally for the preparation of meals or for demonstrating such preparation (and hence not a kitchen as defined in section 26.1 (a) (2)). Yet the facilities he uses may not differ substantially from those ordinarily found in a "kitchen", and may clearly not be commercial-scale processing facilities. For example, a farmer may have a kitchen in his home, where the meals for his household are prepared, and separate facilities elsewhere on his premises, perhaps in a shed, consisting of a stove, and a steamer or pressure cooker. A person who has such a place and facilities may apply to his board in writing for permission to treat the processed foods produced there as "home processed foods". He shall describe the facilities he intends to use, the purposes for which those facilities are ordinarily used, the total amount of processed foods he expects to produce there, and the disposition to be made of such processed foods.

(b) If the board finds that the facilities to be used are clearly not commercial-scale processing facilities and do not differ substantially from those ordinarily found in a kitchen, it shall notify the applicant that the foods so produced may be treated as home-processed foods. The applicant may then use and transfer them as permitted by sections 26.2 and 26.3 of this order.

SEC. 26.5 *Person may have foods grown by members of his family unit processed by a processor for household consumption*—(a) *He may acquire such foods point-free.* A person may acquire from a "processor", point-free, processed foods produced for him (including foods frozen for him) from foods which he or members of his family unit have grown, if he supplies all the ingredients in an amount necessary to produce such foods. Not more than one hundred (100) quarts of such processed foods per member may be acquired by or for any family unit under this section in any calendar year. He may acquire such processed foods point-free only if he gives to the processor a signed statement that the foods to be processed were grown by a member of his family unit, together with the names of each member of his family unit. The processor shall retain this statement for one year.

(b) *He may consume such foods and give away limited amounts.* He may consume such foods, and let the members of his family unit, and others who eat at his table or on a farm he operates, consume them, without giving up points. He and the members of his family unit may give (but not sell) such foods to any other person without receiving points, but not more than fifty (50) quarts of such foods per members may be given away point-free in any calendar year by the family unit.

(c) *He may sell only for points, and must surrender points he gets to the board.* He may not sell or transfer any of such foods (except for those he is permitted to give away point-free by the last paragraph) unless he gets points equal to the point value of the foods so transferred. He must also get points for any gifts made in excess of the amount permitted by the last paragraph. (Such foods are not home processed foods, and they may be transferred only at their regular point value, as fixed by Revised Supplement No. 1 to this order, rather than at the point value of home processed foods.) For this purpose, he need not register as a processor or make reports, but must keep a record of any transfer he makes, showing the amount and date of the transfer, and the name and address of the person to whom the transfer is made. If he makes any transfers for points during any month, he must give up the points to his board on or before the tenth day of the next month.

SEC. 26.6 *Consumer groups may acquire and use processed foods they produce in commercial scale processing facilities*—(a) *Member of group may acquire his share of processed foods produced.* In some cases, a group of persons may be permitted by the owner or operator of commercial-scale processing facilities to use such facilities after business hours, or during the off-season. Each member of a group which produces processed foods in such facilities primarily for consumption in their households or on farms they operate, may acquire his share of the foods so produced point-free, and without the limitation as to amount established by section 26.5 of this order, but only if:

(1) He "produces" his share of such processed foods (he "produces" such share if he participates in the production by doing any of the things described in section 26.1 (a) (1) of this order); and

(2) Neither the person who owns or who normally operates the facilities

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*Copies may be obtained from the Office of Price Administration.

†8 F.R. 1840, 2288, 2681, 2684, 2943, 3179, 3949, 4342, 4525, 4784, 4726, 4921, 5398, 5342, 5480, 5568, 5818, 5819, 5847, 5757, 5758.

used, nor an employee of this person, does any of the processing; and

(3) The members of the group have used the same facilities for the same purpose in the past, or if they have not, they use such facilities only to process fruits or vegetables grown by a member of the group, or by a member of his family unit.

(b) *Member of group may apply to board.* Any member of a group which wishes so to produce processed foods in commercial-scale processing facilities may make application to his board in writing on behalf of the group, stating:

(1) The name and address of each member of the group; and

(2) The facts which bring the group under paragraph (a); and

(3) The total amount of processed foods to be produced; and

(4) The disposition to be made of the foods produced.

(c) *Board may approve application.* If the board finds that the group and its members meet all the requirements of paragraph (a) of this section, it shall approve the application.

(d) *Member may acquire and consume his share point-free and give away limited amounts.* Upon receipt of approval of the application from the board, each member of the group may acquire his share of the processed foods produced by the group point-free, and may consume it, and let the members of his family unit, and others who eat at his table or on a farm he operates, consume it, without giving up points. He and the members of his family unit may give (but not sell) his share to any other person, but no more than fifty (50) quarts of such foods per member may be given away point-free by the family unit in any calendar year. Processed foods produced pursuant to this paragraph are not home processed foods. A member of a group who sells or transfers any part of his share of such foods (except for the amount he is permitted to give away point-free by this paragraph) is considered a processor as to that part. He must register and file the reports required by section 3.2 of this order. He may make such transfers only in exchange for points equal to the regular point value of the processed foods transferred, as fixed by Revised Supplement No. 1 to this order, rather than at the point value of home processed foods.

SEC. 26.7 *Certain community groups may apply to Washington Office for an exception*—(a) In certain instances, as in the case of some religious groups or sects, communities carry on their activities and produce and distribute foods among their members on a cooperative basis. In such cases, certain members of the community may produce processed foods from fruits and vegetables grown by members, while others produce other types of foods. The various types of foods produced may then be interchanged, but many members of the community who get the processed foods may not have been members of the group which produced them and so may not meet the requirements of this Article. If, in such case, the processed foods are produced exclusively for consumption by members of the community, the group may apply to the Director of the Food Rationing Division, Office of Price Administration, Washington, D. C., for an exception permitting distribution of such processed foods to any members of the community. The application must be in writing, in any form, and must show the manner in which the community operates, the type of facilities used for processing, the source of the foods processed, the amount of processed foods produced, and the class of persons by whom they are produced and to whom they are to be distributed.

(b) The Director of the Food Rationing Division will act on the application according to the circumstances of the case and may, in his discretion, permit distribution of the foods among the members of the community in such manner and under such conditions as he establishes.

SEC. 26.8 *Group II and III institutional users may use and transfer processed foods they produce as provided in General Ration Order 5.* This Article does not apply to the production of processed foods for use in, or to the use of processed foods in, Group II or III institutional user establishments. The production, use, and transfer by Group II or III institutional users of home processed foods and of other processed foods they produce, are governed by General Ration Order 5.

This amendment shall become effective May 15, 1943.

NOTE: All reporting and record-keeping requirements of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Pub. Law 671, 76th Cong., as amended by Pub. Laws 89, 421, 507 and 729, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; WPB Directive 1, 7 F.R. 562; Food Directive 3, 8 F.R. 2005, and Food Directive 5, 8 F.R. 2251)

Issued this 10th day of May, 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7385; Filed, May 10, 1943; 4:49 p. m.]

PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS

[RO 13,[1] Amendment 29]

PROCESSED FOODS

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.*

Ration Order 13 is amended in the following respects:

1. The first sentence of section 8.4 (a) is amended to read as follows:

(a) A person who has a ration bank account may not deposit stamps later than one calendar month and ten days after the last date on which they were good for use by a consumer.

2. The first sentence of section 9.5 (d) (1) is amended to read as follows:

(1) *Stamps.* No stamp may be accepted from the transferee more than one calendar month after the last date on which it was good for use by a consumer.

This amendment shall become effective at 6:00 p. m., May 10, 1943.

(Pub. Law 671, 76th Cong., as amended by Pub. Laws 89, 421, 507 and 729, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; W.P.B. Directive 1, 7 F.R. 562; Food Directive 3, 8 F.R. 2005, and Food Directive 5, 8 F.R. 2251)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7380; Filed, May 10, 1943; 4:47 p. m.]

PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS

[RO 13,[1] Amendment 5 to Rev. Supp. 1]

PROCESSED FOODS

Section 1407.1102 (f) is added to read as follows:

(f) Home processed foods shall have a point value of 8 points for each quart.

This amendment shall become effective May 15, 1943.

(Pub. Law 671, 76th Cong., as amended by Pub. Laws 89, 421, 507 and 729, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; WPB Directive 1, 7 F.R. 562; Food Directive 3, 8 F.R. 2005, and Food Directive 5, 8 F.R. 2251)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7386; Filed, May 10, 1943; 4:50 p. m.]

PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS

[RO 16,[2] Amendment 20]

MEAT, FATS, FISH, AND CHEESES

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.*

Ration Order 16 is amended in the following respects:

1. The first sentence of section 9.4 (a) is amended to read as follows:

(a) A person who has a ration bank account may not deposit stamps later than one calendar month and ten days

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 1840, 2288, 2677, 2681, 2684, 2943, 3179, 3949, 4342, 4525, 4726, 4787, 4892, 4921, 5318, 5341, 5342, 5480, 5568, 5757, 5758.

[1] 8 F.R. 1840, 2288, 2677, 2681, 2684, 2943, 3179, 3949, 4342, 4525, 4784, 4892, 4921, 5318, 5341, 5342, 5568.

[2] 8 F.R. 3591, 3715, 3949, 4137, 4350, 4423, 4721, 4784, 4893, 4967, 5172, 5318, 5567, 5679, 5739, 5819, 5847.

after the last date on which they were good for use by a consumer.

2. The first sentence of section 10.5 (e) (1) is amended to read as follows:

(1) *Stamps.* No stamp may be accepted from the transferee more than one calendar month after the last date on which it was good for use by a consumer.

This amendment shall become effective at 6:00 p. m., May 10, 1943.

(Pub. Law 671, 76th Cong., as amended by Pub. Laws 89, 421, 507 and 729, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; WPB Dir. 1, 7 F.R. 562, and Supp. Dir. 1–M, 7 F.R. 7234; Food Dir. 1, 8 F.R. 827; Food Dir. 3, 8 F.R. 2005; Food Dir. 5, 8 F.R. 2251; Food Dir. 6, 8 F.R. 3471; Food Dir. 7, 8 F.R. 3471)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43–7379; Filed, May 10, 1943; 4:48 p. m.]

PART 1418—TERRITORIES AND POSSESSIONS

[MPR 183,[1] Amendment 30]

PUERTO RICO

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Maximum Price Regulation 183 is amended in the following respects:

1. Section 1418.14 (q), Table XVI, and (s), Table XVIII are amended to read as follows:

(q) *Table XVI: Maximum prices for wheat flour.*

(1) The maximum prices for wheat flour sold or delivered in the Territory of Puerto Rico shall be:

	Sales to wholesalers and industrial users (price per pound)	Sales at wholesale (price per pound)	Sales at retail (price per pound)
All types of Hard Wheat Flour	$0.038	$0.042	$0.05
All types of Soft Wheat Flour	.0425	.0470	.05

(s) *Table XVIII: Maximum prices for canned Vienna sausage.*

	Sales to wholesalers (case of 48/4 oz. cans)	Sales at wholesale (case of 48/4 oz. cans)	Sales at retail (price per 4 oz. can)
Canned Vienna sausage whole	$16.00	$17.70	$0.95

2. Section 1418.14 (v), Table XX, is amended by adding a new item after McGrath (Old Style) and before Phillips (Old Style)

Items and brand names	Unit (case of 48)	Price to wholesaler	Price to retailer	Retail price (per can)
Morton House (new formula) consommé with noodles	10½ oz. cans	$4.20	$4.65	$0.12

This amendment shall become effective May 10, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43–7381; Filed, May 10, 1943; 4:48 p. m.]

PART 1499—COMMODITIES AND SERVICES

[MPR 165 as Amended,[2] Supp. Service Reg. 14]

POWER LAUNDRIES IN MINNEAPOLIS-ST. PAUL AREA

A statement of the considerations involved in the issuance of Supplementary Service Regulation No. 14 has been filed with the Division of the Federal Register.* For the reasons set forth in that statement and under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942 as amended, and Executive Order No. 9250, Supplementary Service Regulation No. 14 is hereby issued.

§ 1499.664 *Power laundries in Minneapolis-St. Paul area—(a) Dollars-and-cents maximum prices established for services sold at retail by power laundries located in the Minneapolis-St. Paul area.* (1) The maximum prices established by Maximum Price Regulation No. 165 as amended—Services—for the family laundry services specified in Appendix A are modified as hereinafter provided. The maximum prices for family laundry services when sold at retail by power laundries located in the Minneapolis-St. Paul area shall be the prices set forth in Appendix A.

The maximum price of a family laundry service which does not conform exactly to the description of one of the listed services in Appendix A shall be that of the listed service all of whose specifications are met by the unlisted service. Thus, where an unlisted service offers more elements of laundry service than a particular listed service, but does not meet the specifications of a higher-priced listed service, its maximum price shall be that of the lower-priced listed service.

Power laundries in this area shall continue to accept as wearing apparel and flatwork those articles which have customarily been accepted as such, but may charge for all others at list price. In all laundry services except damp wash, starch must be supplied where necessary for proper finishing of wearing apparel (including shirts) unless the customer requests no starch. Handkerchiefs are to be priced and treated as flatwork.

(2) *Definitions.* As used in this supplementary service regulation, the term:

"Family laundry services" means all laundry services except those supplied on a commercial or institutional basis.

"Power laundries" means all establishments in the Minneapolis-St. Paul area offering laundry services for sale, with the exception of such hand laundries as do not use power machinery to wash laundry.

"Minneapolis-St. Paul area" means the counties of Hennepin and Ramsey, Minnesota, and is limited to them.

(3) *Posting requirements.* Within thirty days after the issuance of this supplementary service regulation, power laundries located in the Minneapolis-St. Paul area and offering family laundry services shall post, each in its own establishment, in a place and manner so that it is plainly visible to the purchasing public, a placard or card containing the maximum prices for the family laundry services set forth in Appendix A to this supplementary service regulation, and for any other family laundry service, if offered. Also within thirty days after the issuance of this supplementary service regulation, power laundries in this area shall furnish to each customer a statement of the maximum prices of the services offered, with a description of each. In this statement the description of the listed services and their prices shall be exactly as set forth in Appendix A. Thereafter, new customers shall be furnished a similar statement.

(4) *Other laundry services.* The maximum prices for family laundry services at wholesale and for laundry services other than family laundry services rendered by power laundries in Minneapolis-St. Paul area shall be governed by Maximum Price Regulation No. 165 as amended or other applicable regulation.

(5) *Prohibition against indirect price increases.* A laundry may not refuse to supply any low-priced laundry service which it supplied in March 1942, if it supplies or offers to supply any higher-priced service which includes the same or substantially the same processes (with or without additional processes) as the low-priced service, except that a laundry may substitute for any service supplied in March 1942, the service listed in Appendix A of this supplementary service regulation which most closely resembles it in specifications and price.

(6) *Less than maximum prices.* Lower prices for each of the family laundry services listed in Appendix A may be charged, offered, demanded, or paid.

(7) Appendix A. Maximum prices for family laundry services at retail.

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 4122, 4351, 4781, 4788, 5486, 5739, 5742, 5819.

[2] 7 F.R. 6428, 6966, 8239, 8431, 8793, 8943, 8948, 9197, 9342, 9343, 9785, 9971, 9973, 10189, 10619, 10718, 11010; 8 F.R. 1060, 3324, 4782, 5681.

Services	*Maximum prices*
Service No. 1 *Damp wash*, in which all laundry is washed and returned damp:	15 lbs. or less for 95¢, plus 4¢ for each additional pound. If requested, each shirt finished for 12¢ extra.
Service No. 2 *Soft dry*, called "economy service", in which the wearing apparel is washed and returned dry and folded, and the flatwork is washed and returned finished. Suitably priced for bundles weighing 24 lbs. or more.	30 lbs. or less for $2.35, plus 7¢ for each additional pounds. If requested, each shirt finished for 10¢ extra.
Service No. 3 *soft dry*, called "semi-finished", "rough dry", etc., in which the wearing apparel is washed and returned dry and folded, and the flatwork is washed and returned finished. Suitably priced for bundles up to 20–23 lbs. in weight.	7 lbs. or less for $1.00, plus 8¢ for each additional pound. If requested, each shirt finished for 10¢ extra.

Service No. 4 *Family finish*, called "budget bundle", "domestic finished", "all ironed", "de Luxe", etc., in which both flatwork and wearing apparel are washed and returned fully finished and ready for use.

Wearing apparel, shirts included, at 30¢ per lb.; flatwork at 11¢ per lb. Minimum charge $2.00. Bundles not including at least 5 lbs. of flatwork may be priced under finished list prices (Service No. 5).

Service No. 5 Finished list

Men's finish list:	
Shirts, collar attached and neckband	$.18
Shirts, short bosom	.26
Shirts, pleated	.37
Shirts, full dress	.37
Shirts, fancy wool and silk	.26
Boys' waists	.13
Collars, starch	.05
Collars, soft	.05
Unionsuits, wool and silk	.23
Unionsuits, cotton	.19
B. V. D.'s:	
Cotton	.19
Silk	.19
Shorts:	
Cotton	.11
Silk	.13
Drawers, long	.16
Undervest, sleeveless:	
Cotton	.10
Silk	.12
Undershirts, long sleeve	.16
Night shirts:	
Cotton	.21
Silk	.26
Pajama suits:	
Cotton	.26
Silk	.32
Handkerchiefs:	
Cotton	.03
Silk	.05
Sox, pair	.06
Vest edge	.10
Sweaters, light weight	.37
Vest, full dress	.37
Coats, duck	.32
Pants, duck	.30
Pants, cotton strips	.37
Slacks	.37
Pants, linen	.53
Knickers, linen	.53
Long coat, (butcher, etc.)	.32
Washable suits, ladies and mens	.79
Overall and jacket	.40
Overall	.25
Jacket	.15
Coveralls	.35
Women's finish list:	
Aprons, band or waist	.07
Aprons, bib	.16
Aprons, coverall	.32
Aprons, short sleeve, Hoover	.32
Smocks	.32
Nurses uniforms	.37
Caps	.05
Collars, buster brown	.10
Cuffs, each	.05
Women's finish list—Continued.	
Dresses:	
Cotton, white	$.32
Silk	.53
Colored cotton	.32
Colored silk	.53
Blouses or shirt waist:	
Cotton	.26
Silk	.37
Princess slips:	
Cotton	.21
Silk	.26
Chemises:	
Cotton	.21
Silk	.26
Unionsuits	.21
Undervest:	
Cotton	.11
Silk	.13
Bloomers:	
Cotton	.19
Silk	.21
Shorts	.11
Stockings, pair	.10
Night dresses:	
Cotton	.21
Silk	.32
Pajama suits:	
Cotton	.26
Silk	.42
Kimonos:	
Cotton	.32
Silk	.42
Brassières	.12
Children's dresses	.26
Children's bloomers	.10
Belts, cotton	.05
Handkerchiefs, cotton	.03
Stepins:	
Cotton	.10
Silk	.16
Household finish list:	
Quilts:	
Cotton	.53
Silk	1.03
Bedspreads:	
Cotton	.37
Silk and wool	.53
Bolster covers	.10
Sheets	.12
Pillowcases	.06
Pillows	.53
Dresser scarfs	.16
Bed pads	.37
Tablecloths:	
Machine finished per sq. yd	.05
Machine hand finished per sq. yd	.10
Hand finished per sq. yd	.26
Rags	.03
Dish towels	.03
Hand towels	.06
Bath towels	.07
Napkins, machine	.05
Napkins, hand finish	.05
Lunch cloths	.10
Bath rugs:	
Size 2 x 3	.25
Size 3 x 5	.35
Doilies	.10

In the finished list service there may be imposed a minimum charge of 50¢ for cash-and-carry customers, and a minimum of $1.00 for delivery customers.

No additional charges of any kind whatsoever may be added to the maximum prices listed in this Supplementary Service Regulation.

This Supplementary Service Regulation No. 14 (§ 1499.664) shall become effective May 10, 1943.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7373; Filed, May 10, 1943; 4:47 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 457 Under § 1499.3 (b) of GMPR]

HAMERSLEY MANUFACTURING CO.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, *It is hereby ordered:*

§ 1499.1695 *Authorization of maximum price for sale of anti-corrosive glassine paper by The Hamersley Manufacturing Company.* (a) On and after May 11, 1943 the maximum price for the sale by The Hamersley Manufacturing Company of Garfield, New Jersey, of Super Calendered Grade A Anti-Corrosive glassine paper in basis weights from 30 to 60 lbs. inclusive shall be $13.25 per cwt. f. o. b. mill, Garfield, New Jersey. Such paper shall conform to the United States government specifications AN-P-12 issued July 2, 1942.

(b) The maximum price set forth in this order shall be subject to adjustment at any time by the Office of Price Administration.

(c) This Order No. 457 may be revoked or amended by the Price Administrator at any time.

(d) This Order No. 457 (§ 1499.1695) shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong., E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7382; Filed, May 10, 1943; 4:49 p. m.]

PART 1499—COMMODITIES AND SERVICES

[SR 14 to GMPR, Amendment 169]

COMMERCIAL REFRIGERATION AND COMMERCIAL REFRIGERATION APPARATUS

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Section 1499.73 (a) (100) is added to read as follows:

(100) *Modification of maximum prices of commercial refrigeration and com-*

*Copies may be obtained from the Office of Price Administration.

mercial refrigeration apparatus. (i) On and after May 10, 1943, all persons other than manufacturers selling commercial refrigeration and commercial refrigeration apparatus, shall, in view of the provisions of section 614, Title VI of the Revenue Act of 1942 reduce their presently established maximum prices by an amount representing the federal excise tax imposed by section 546, Title V, Part IV of the Revenue Act of 1941, in the following manner:

(*a*) By the amount of the federal excise tax if shown as a separate item on the purchase invoice, or,

(*b*) By 1/11 of the presently established maximum price where the federal excise tax was not shown on the purchase invoice as a separate item but was included in the sales price.

The provisions of this subparagraph (100) shall not be applicable to any article of commercial refrigeration or commercial refrigeration apparatus on hand May 10, 1943, originally purchased from the manufacturers thereof during the period November 1, 1941, to October 31, 1942, and for which the manufacturers were reimbursed for the federal excise tax paid by them on their sales.

(ii) *Definitions.* (*a*) For the purpose of this subparagraph the term "commercial refrigeration and commercial refrigeration apparatus" means beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making machines, milk cooler cabinets, refrigerators having a net storage space of more than 20 cubic feet, which were primarily designed for use with a mechanical refrigeration unit; and compressors, condensers, evaporators, expansion units, absorbers and controls for, or suitable for use as a part of or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated above.

(*b*) The term "manufacturer" means any person who makes the first sale of any article of commercial refrigeration or commercial refrigeration apparatus.

(iii) Every person affected by this paragraph shall immediately prepare a record showing all commercial refrigeration and commercial refrigeration apparatus on hand as of May 10, 1943, which was sold by the manufacturer thereof tax paid. This record which shall be retained for at least 90 days after such inventory has been sold or otherwise disposed of shall contain the following information with respect to each article. (*a*) A description, (*b*) the serial number if any, (*c*) the name of the manufacturer, (*d*) the date purchased, (*e*) the purchase price, (*f*) the name of the supplier, (*g*) the presently established maximum price, (*h*) the federal excise tax if shown as a separate item on the purchase invoice or the amount computed in accordance with (i) (*b*) above.

This amendment shall become effective May 10, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

NOTE.—The reporting provisions of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7383; Filed, May 10, 1943; 4:49 p. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 51 Under SR 15]

FRANK DIBERT

Order No. 51 under § 1499.75 (a) (3) of Supplementary Regulation No. 15; Docket No. GF3-3110.

For the reasons set forth in an Opinion issued simultaneously herewith, It is ordered:

§ 1499.1351 *Adjustment of maximum prices for contract carrier services sold by Frank Dibert.* (a) Frank Dibert, 2714 Zora Street, Joplin, Missouri, may sell and furnish contract carrier services in connection with the transportation of lead and zinc concentrates from, to and between points in Kansas, Oklahoma and Missouri at prices not to exceed 55 cents per ton.

(b) All requests of the application not granted herein are denied.

(c) This Order No. 51 may be revoked or amended by the Price Administrator at any time.

(d) This Order No. 51 (§ 1499.1351) is hereby incorporated as a section of Supplementary Regulation No. 14, which contains modifications of maximum prices established by § 1499.2.

(e) This Order No. 51 (§ 1499.1351) shall become effective May 11, 1943.

(Pub. Laws No. 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7374; Filed, May 10, 1943; 4:48 p. m.]

TITLE 36—PARKS AND FORESTS

Chapter I—National Park Service

PART 20—SPECIAL REGULATIONS

SEQUOIA NATIONAL PARK; FISHING REGULATIONS

Pursuant to the authority contained in the act of August 25, 1916 (39 Stat. 535, 16 U.S.C. 3), paragraph (d) of § 20.8, Title 36, Code of Federal Regulations, is amended by adding thereto a new subparagraph (4) reading as follows:

§ 20.8 *Sequoia National Park.* * * *

(d) *Fishing; closed waters.* * * *

(4) The section of the Kern River between Chagoopa Bridge and Rock Creek.

Issued this 29th day of April 1943.

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 43-7401; Filed, May 11, 1943; 9:52 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—General Land Office

Subchapter L—Mineral Lands

PART 192—OIL AND GAS PERMITS AND LEASES

ROYALTIES ON NEW FIELDS

Regulations relating to Royalties on New fields or deposits of oil or gas, discovered during period of National Emergency under Act of December 24, 1942, Public Law 832, 77th Congress.

§ 192.56a *Statutory authority.* The Act of December 24, 1942, Public Law 832, 77th Congress, provides that during the period of the national emergency proclaimed by the President May 27, 1941 (Proclamation No. 2487, 55 Stat. 1647), where the Secretary of the Interior determines that a new oil or gas field or deposit has been discovered by virtue of a well or wells drilled within the boundary of any lease issued under the provisions of the Act of February 25, 1920, as amended (30 U.S.C. 181-263), the royalty obligation to the United States of the lessee who drills such well or wells as to such new deposit shall be limited for 10 years following the date of such discovery to a flat rate of 12½ percent.

§ 192.56b *New oil and gas fields or deposits defined; leases affected.* The benefits of the Act shall apply only to the lease upon which a discovery of a new field or deposit has been made except as otherwise herein provided.

The Act does not apply to discoveries made prior to its enactment or to discoveries on leases carrying a royalty of less than 12½ percent.

A discovery of oil or gas within the area of any geologic trap in which no discovery theretofore has been made shall be deemed to constitute the discovery of a new oil or gas field within the meaning of the Act.

Any sand or zone situated at a stratigraphic level higher or lower than the known productive sands within the area of any geologic trap shall be deemed upon discovery to be a new deposit within the meaning of the Act.

§ 192.56c *Unitized areas.* Section 27 of the Act of February 25, 1920 (41 Stat. 437, 448), as amended by the Act of March 4, 1931 (46 Stat. 1523, 1525; 30 U.S.C. 184), authorizes the Secretary of the Interior, in his discretion, with the consent of the holders of leases involved in unit plans of development or operation to establish, alter, change, or revoke the drilling, producing, and royalty requirements of such leases as he may deem necessary or proper to secure the protection of the public interest.

In conformity with the intent of Congress to encourage the discovery of new reserves of oil and gas, the same benefits granted by the Act of December 24, 1942, shall be extended to all leases committed to and included in an approved unit agreement upon a determination by the Secretary of the Interior that a discovery has been made in a unitized sand or zone of a new oil or gas field or deposit anywhere within the unit area.

§ 192.56d *Computation of royalty*—(a) *Production subject to Act.* All production from a new oil or gas field or deposit which is produced from or allocated to a lease, shall be at a flat rate of 12½ per centum in amount or value of such production or allocation and shall be separately measured and accounted for.

(b) *Production not subject to Act.* The discovery of a new oil or gas field or deposit under this Act shall not affect the computation of royalty on production from deposits previously known to exist.

§ 192.56e *More than one discovery.* The discovery of a new deposit of oil or gas in a well or wells held to be subject to the provisions of the Act shall not bar a lessee from claiming the discovery of another new deposit discovered at a later date within the boundaries of the lease.

§ 192.56f *Procedure after discovery.* An application for royalty benefits under the Act by reason of any claimed discovery of a new oil or gas field or deposit shall be submitted in triplicate by the lessee or his authorized agent or operator. The original and one copy of the application shall be filed with the local land office for the district in which the land is located or in the General Land Office within 45 days after the discovery is made, and one copy shall be filed concurrently in the office of the appropriate Federal oil and gas supervisor.

The application shall identify the lessee and operator, the serial number of the lease, the exact location of the well or wells, the name of the productive sand or zone, the depth to the top of the productive formation, the amount of productive strata penetrated, and a complete itemized production statement by days, not exceeding 30, from the date of the discovery. If the discovery is made on unitized land, as provided herein, the application should identify all leases affected.

The claimant shall conduct such test and furnish such well data and geologic evidence as may be required by the Federal oil and gas supervisor.

The determination in any case as to whether a new field or deposit has been discovered and the effective date thereof will be made by the Secretary of the Interior after a report has been submitted by the Geological Survey.

§ 192.56g *Other applicable regulations.* The oil and gas lease and operating regulations shall be applicable to all leases affected by these regulations so far as they are not inconsistent herewith.

(Sec. 32, 41 Stat. 450; 30 U.S.C. 189.)

FRED W. JOHNSON,
Commissioner.

I concur:

JULIAN D. SEARS,
Acting Director,
Geological Survey.

Approved: May 3, 1943,

HAROLD L. ICKES,
Secretary of the Interior.

[F. R. Doc. 43-7391; Filed, May 11, 1943; 10:04 a. m.]

[Order 1814]

LOUISIANA

OIL AND GAS LEASES

MAY 7, 1943.

Order No. 1530 of November 7, 1940 (5 F.R. 4610), suspending the issuance of oil and gas leases under the act of February 25, 1920 (41 Stat., 437) as amended, in the State of Louisiana, and Order No. 1565 (6 F.R. 2562), modifying Order No. 1530, excluding from its operation all land in the State lying north of the line between Townships 4 and 5 North, Louisiana Meridian, Louisiana, are hereby vacated, the land to be subject to leasing upon the posting of this order in the Tract Book Division, General Land Office.

[SEAL] HAROLD L. ICKES,
Secretary of the Interior.

[F. R. Doc. 43-7402; Filed, May 11, 1943; 9:52 a. m.]

Chapter II—Bureau of Reclamation

[No. 51]

PART 402—ANNUAL WATER CHARGES

SHOSHONE IRRIGATION PROJECT, HEART MOUNTAIN DIVISION

APRIL 23, 1943.

Public notice of annual water charges for lands in private ownership.

1. *Water rental.* To the extent that water may be available from Government canals without additional construction, irrigation water will be furnished upon a rental basis under approved applications for temporary water service during the irrigation season of 1943 and thereafter until further notice to lands in private ownership within the Heart Mountain Division of the Shoshone Project, Wyoming.

2. *Charges and terms of payment.* The minimum water rental charge for the irrigation season of 1943 and thereafter until further notice will be One Dollar and twenty-five cents ($1.25) per acre for each irrigable acre of land in each 40-acre subdivision for which application has been or is hereafter made. The said minimum charge will entitle the applicant to two and one-half (2½) acre-feet of water, or so much thereof as may be necessary for beneficial use, for each irrigation season. The minimum charge shall become due and payable annually in advance of the delivery of water each year. Water in addition to the allowance under the minimum charge will be furnished during any irrigation season covered by this notice at the rate of seventy-five cents ($0.75) per acre-foot. The charge for additional water will become due and payable in advance of its delivery. *Provided,* That, when water rental application is submitted and approved after July 15 of any irrigation season during which this notice is effective, the minimum charge shall apply as a credit on the minimum charge for the next following irrigation season, but a charge of seventy-five cents ($0.75) per acre-foot, payable in advance of delivery, will be made for water furnished after July 15 during the remainder of the irrigation season in which such application is made. No water will be furnished during any irrigation season unless all water rental charges for the preceding year have been paid in full.

3. Application for temporary water service may be made by the landowner or by anyone who presents evidence satisfactory to the Superintendent of the Shoshone Project that he is the renter or lessee of the land for which water is requested, or that he has been authorized by the owner to make a water rental application for such land.

4. Payment of water rental charges shall be made at the office of the Superintendent, Bureau of Reclamation, Powell, Wyoming.

MICHAEL W. STRAUS,
First Assistant Secretary.

[F. R. Doc. 43-7400; Filed, May 11, 1943; 9:52 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

General Land Office.

LAND WITHDRAWALS

VARIOUS STATES

Reducing and revoking certain withdrawals for forest administrative sites.

The orders of this Department of October 26, November 27, December 4 and 11, 1906, March 4, 1907, January 11, March 11, May 2 and 25, and June 12 and 30, 1908, withdrawing certain lands for use as forest administrative sites, are hereby revoked so far as they affect the following-described lands:

COLORADO

NEW MEXICO PRINCIPAL MERIDIAN

T. 36 N., R. 6 W.,
Sec. 8, SE¼NW¼, and NE¼SW¼;
Sec. 17, NW¼NE¼.

The areas described aggregate 120 acres, in the San Juan National Forest, 80 acres in sec. 8 withdrawn as a part of Station No. 69 (Vallecito administrative site), and 40 acres in sec. 17 withdrawn as the Pine River administrative site.

SIXTH PRINCIPAL MERIDIAN

T. 3 N., R. 77 W.,
Sec. 14, SW¼.

The area described contains 160 acres, in the Arapaho National Forest, withdrawn as Station No. 50 (Gold Run administrative site).

T. 5 N., R. 81 W.,
Sec. 23, W½NE¼ and E½NW¼.

The area described contains 160 acres, in the Arapaho National Forest, withdrawn as Station No. 56 (Indian Creek administrative site).

T. 11 N., R. 82 W.,
Sec. 35, E½.

The area described contains 320 acres, in the Routt National Forest, withdrawn as Station No. 12.

MONTANA

PRINCIPAL MERIDIAN

T. 5 N., R. 4 E.,
Sec. 1, W½NE¼ and NW¼SE¼.

The areas described aggregate 120 acres, in the Helena National Forest, withdrawn as the Dry Creek administrative site.

OREGON

WILLAMETTE MERIDIAN

T. 6 S., R. 9 W.,
Sec. 4, NW¼NE¼ and N½SW¼NE¼.

The areas described aggregate 60 acres, in the Siuslaw National Forest, withdrawn as the Hiack administrative site.

T. 6 S., R. 10 W.,
Sec. 35, SE¼NE¼.

The area described contains 40 acres, near the Siuslaw National Forest, withdrawn as the Salmon River administrative site.

T. 36 S., R. 6 E.,
Sec. 9, SW¼NE¼, S½NW¼, N½NW¼SW¼, NW¼NE¼SW¼, N½NE¼NE¼SW¼, and N½N½NW¼SE¼.

The areas described aggregate 165 acres, in the Rogue River National Forest, withdrawn as a part of the Pelican administrative site.

UTAH

SALT LAKE MERIDIAN

T. 11 N., R. 2 E.,
Sec. 34, SW¼.

The area described contains 155.11 acres, in the Cache National Forest, withdrawn as the Blacksmith Fork Station.

WYOMING

SIXTH PRINCIPAL MERIDIAN

T. 29 N., R. 100 W.,
Sec. 7, SW¼.

The area described contains 157.45 acres, in the Washakie National Forest, withdrawn as Station No. 54 (South Pass administrative site).

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

APRIL 28, 1943.

[F. R. Doc. 43-7397; Filed, May 11, 1943; 9:52 a. m.]

[Public Land Order 118]

OREGON

LAND WITHDRAWAL FOR USE OF WAR DEPARTMENT

Withdrawing public lands for use of the War Department as a pattern bombing range.

By virtue of the authority vested in the President and pursuant to Executive Order No. 9146 of April 24, 1942, *It is ordered* As follows:

Subject to valid existing rights, the following-described public lands are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for the use of the War Department as a pattern bombing range:

WILLAMETTE MERIDIAN

T. 5 N., R. 30 E.,
Sec. 10, SE¼;
Sec. 11, E½W½.

The areas described aggregate 320 acres.

This order shall take precedence over, but shall not rescind or revoke, the withdrawal for classification and other purposes made by Executive Order No. 6910 of November 26, 1934, as amended, so far as such order affects the above-described lands.

It is intended that the lands described herein shall be returned to the administration of the Department of the Interior, when they are no longer needed for the purpose for which they are reserved.

HAROLD L. ICKES,
Secretary of the Interior.

APRIL 29, 1943.

[F. R. Doc. 43-7393; Filed, May 11, 1943; 9:52 a. m.]

[Public Land Order 119]

CALIFORNIA

LAND WITHDRAWAL

Revocation of Executive Orders of May 17, 1927, and August 18, 1932, creating public water reserves.

By virtue of the authority contained in section 1 of the act of June 25, 1910, c. 421, 36 Stat. 847 (U.S.C., title 43, sec. 141), and pursuant to Executive Order No. 9146 of April 24, 1942, *It is ordered*, As follows:

The Executive Order of May 17, 1927, withdrawing lands for municipal water-supply purposes (Public Water Reserve No. 109), as modified by Executive Order No. 5908 of August 22, 1932, and Executive Order No. 5902 of August 18, 1932, creating Public Water Reserve No. 145, as modified by Executive Order No. 8784 of June 13, 1941, are hereby revoked.

ABE FORTAS,
Acting Secretary of the Interior.

MAY 4, 1943.

[F. R. Doc. 43-7399; Filed, May 11, 1943; 9:53 a. m.]

OFFICE OF PRICE ADMINISTRATION.

[Order 8 Under MPR 121]

AMERICAN BRIQUET CO.

PERMISSION TO ENTER INTO AGREEMENTS AT APPLICABLE MAXIMUM PRICES

Order No. 8 to Maximum Price Regulation No. 121—Miscellaneous Solid Fuels Delivered from Producing Facilities; Docket No. 3121-36.

For the reasons set forth in an opinion which has been issued simultaneously herewith and which has been filed with the Division of the Federal Register, under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended and Executive Order No. 9250 and in accordance with § 1340.243 of Maximum Price Regulation No. 121, *It is hereby ordered:*

(a) On and after March 10, 1943 American Briquet Company, 1417 Sansom Street, Philadelphia, Pennsylvania may enter into agreements with purchasers for the sale of briquets known as "Ambricoal" produced at its plant at Lykens, Pennsylvania, at the applicable maximum prices subject to an agreement to adjust prices upon deliveries made during the pendency of the application in accordance with the disposition thereof.

(b) This order may be revoked or amended by the Price Administrator at any time and in any event is to be effective only to the date upon which said application is finally determined by the Price Administrator.

(c) Unless the context otherwise requires the definition set forth in § 1340.248 of Maximum Price Regulation No. 121 which applies to the term herein.

(d) This Order No. 8 shall become effective as of April 28, 1943.

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7348; Filed, May 10, 1943; 3:03 p. m.]

[Order 37 Under MPR 136, as Amended]

SEALED POWER CORPORATION

AUTHORIZATION OF DISCOUNT SCHEDULES

Order No. 37 under Maximum Price Regulation No. 136, as amended—Machines and Parts, and Machinery Services; Docket No. 3136-177.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register and pursuant to and under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, Executive Order No. 9250, § 1390.25a(c) of Maximum Price Regulation No. 136, as amended, and Revised Procedural Regulation No. 1, *It is hereby ordered:*

(a) Sealed Power Corporation of Muskegon, Michigan is hereby authorized to put into effect the following "volume purchase bonus" discount schedules based on total annual purchases made by jobbers of automotive functional replacement parts purchased from Sealed Power Corporation:

	Discount (percent)
(1) Total annual net purchases piston rings, only:	
$3,000 to $4,000	5
$4,000 to $5,000	7
$5,000 to $6,000	9
$6,000 to $7,000	10
$7,000 to $8,000	11
$8,000 to $9,000	12
$9,000 to $10,000	13
$10,000 to $12,000	14
$12,000 to $15,000	15
$15,000 to $18,000	16
$18,000 to $21,000	17
$21,000 to $25,000	18
$25,000 to $30,000	19
Over $30,000	20
(2) Total annual net purchases all products other than piston rings:	
$3,000 to $5,000	4
$5,000 to $10,000	4½
$10,000 to $15,000	6
$15,000 to $20,000	7½
$20,000 to $25,000	9
$25,000 to $30,000	10½
$30,000 to $35,000	12
$35,000 to $40,000	13½
Over $40,000	15

(b) Sealed Power Corporation shall file a report with the Office of Price Administration, Washington, D. C., by January 31, 1944 and each year thereafter based upon an analysis of a sufficient number of customers to be representative of all sales showing (1) total sales to each such customer for the preceding year, (2) discounts which have been paid to such customers for the preceding year under this

order, and (3) discounts which would have been paid to the same customers under the discounts in effect on March 31, 1942.

(c) This order may be revoked or amended by the Office of Price Administration at any time.

This order shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7347; Filed, May 10, 1943; 3:07 p. m.]

[Order 3 Under MPR 282]

ALLIED PRODUCTS, INC.

APPROVAL OF MAXIMUM PRICE

Order No. 3 under § 1396.255 of Maximum Price Regulation No. 282—Certain Private Formula Pharmaceutical, Proprietary Drug and Cosmetic Products.

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

(a) Maximum prices for sales of Frostilla Industrial Protective Cream in 9½ ounce jars by Allied Products, Inc., having its principal office at 30 Rockefeller Plaza, New York, New York, to The Frostilla Company, Inc., Elmira, New York, said protective cream having the formula submitted by Allied Products, Inc., in a letter to the Office of Price Administration under date of April 12, 1943, are established as follows:

$169.02 per thousand jars delivered.

(b) This Order No. 3 may be revoked or amended by the Office of Price Administration at any time.

This order shall become effective May 11, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 10th day of May 1943.

PRENTISS M. BROWN,
Administrator.

[F. R. Doc. 43-7349; Filed, May 10, 1943; 3:09 p. m.]

Regional Office, Region I

[Order G-1 Under MPR 121]

WELSH ANTHRACITE COAL

ADJUSTMENT OF MAXIMUM PRICES

Order G-1 under § 1340.247a (b) of Maximum Price Regulation 121—Miscellaneous Solid Fuels Delivered from Producing Facilities (Formerly Order 1.)

For the reasons set forth in an opinion accompanying this order and Region I Order G-1 under § 1340.257 (b) (3) of Maximum Price Regulation 122, issued simultaneously herewith, and pursuant to and under the authority vested in each Regional Administrator of the Office of Price Administration by § 1340.247a (b) of Maximum Price Regulation 121, issued by the Price Administrator under the authority vested in him by the Emergency Price Control Act of 1942, *it is hereby ordered,* In accordance with Revised Procedural Regulation No. 1;

(a) George E. Warren Corporation, Boston, Massachusetts, distributor of Welsh anthracite coal produced by Amalgamated Anthracite Collieries, Ltd., Swansea, Wales, Great Britain, may sell and deliver cargoes of Welsh anthracite coal, produced by Amalgamated Anthracite Collieries, Ltd., free alongside any dock facilities in this Region I at the sum of

(1) The price of the coal f. a. s. the particular port of discharge, as quoted to Warren by the British seller and governing British regulatory authorities, and at which Warren is directed to sell, which price is made up of the following items:

(i) Price of coal f. o. b. mines as fixed by the British Coal Control Board or other governing regulatory authority (which price includes Warren's commission for effecting the sale);

(ii) The cost of transportation from the mines to the vessel, loading, ocean freight, and insurance other than war risk insurance, all of which are governed by British regulatory authorities; and

(2) War risk insurance, including war risk insurance on the charge for ocean freight as long as the British Ministry of War Transport requires the payment of ocean freight regardless of the safe arrival of the vessel in this country, at the rates fixed by the British Ministry of War Transport or other British regulatory body.

Provided, however, That any increase in the amount per gross ton paid to Warren as its commission for effecting the sale above the amount of such commission received by Warren during the period October 1–December 31, 1941, inclusive, shall be deducted from the total so arrived at.

(b) Immediately upon receipt of notice that a cargo has sailed from Wales, George E. Warren Corporation shall notify this office in writing, stating the amount of each of the items set forth in paragraph (a) above and the total thereof for each size of coal included in the cargo with a statement of the number of gross tons shipped of each size and the name of the vessel.

Immediately upon arrival of each such cargo, George E. Warren Corporation shall notify this office in writing of such arrival, shall give the name and address of the purchaser thereof and, if there shall have been any change in any of the items set forth in its previous notice concerning said cargo, shall give the details of any such change. In addition, George E. Warren Corporation shall keep this office advised of any notices it receives concerning changes in any of the items set forth in paragraph (a), whether or not applicable to a particular cargo.

(c) This order may be revoked or amended by the Regional Administrator for Region I, or by the Price Administrator, at any time.

(d) This order shall become effective December 1, 1942.

Issued this 1st day of December 1942.

K. B. BACKMAN,
Regional Administrator.

[F. R. Doc. 43-7361; Filed, May 10, 1943; 3:04 p. m.]

[Order G-1 Under MPR 122]

WELSH ANTHRACITE COAL

ADJUSTMENT OF MAXIMUM PRICES

Order G-1 under § 1340.257 (b) (3) of Maximum Price Regulation 122—Solid Fuels Sold and Delivered by Dealers (Formerly Order 1).

For the reasons set forth in an opinion accompanying this order and Region I Order G-1 under § 1340.247a (b) of Maximum Price Regulation 121, issued simultaneously herewith, and pursuant to and under the authority vested in each Regional Administrator of the Office of Price Administration by § 1340.257 (b) (3) of Maximum Price Regulation 122, issued by the Price Administrator under the authority vested in him by the Emergency Price Control Act of 1942, *It is hereby ordered,* in accordance with Revised Procedural Regulation 1, That:

(a) Any dealer in Region I who purchases Welsh anthracite coal produced by Amalgamated Anthracite Collieries, Ltd., Swansea, Wales, Great Britain, from George E. Warren Corporation, Boston, Massachusetts, in cargo lots free alongside dock facilities in Region I, and unloads and resells said coal, may increase its wholesale and retail maximum prices determined in accordance with § 1340.261 (a) and (b) of Maximum Price Regulation 122, or in accordance with §1340.261 (c) of Maximum Price Regulation 122 prior to the amendment of said subparagraph (c) by Amendment 8 to Maximum Price Regulation 122, in the following manner for coal sold in Region I.

(1) As to sales of cobbles size (approximately equivalent to domestic egg size anthracite), French nuts size (approximately equivalent to domestic stove size) and Stove nuts size (approximately equivalent to domestic chestnut size), by that amount by which the amount charged by George E. Warren Corporation pursuant to the terms of Region I Order G-1 under § 1340.247a (b) of Maximum Price Regulation 121 exceeds the following amounts:

Cobbles size—$11.09 per gross ton plus 3% war risk insurance, or $11.42 per gross ton, f. a. s.

French nuts size—$10.74 per gross ton plus 3% war risk insurance, or $11.06 per gross ton, f. a. s.

Stove nuts size—$10.215 per gross ton plus 3% war risk insurance, or $10.52 per gross ton, f. a. s.

Less, in each case, discount of 16.8¢ per gross ton for payment within 15 days; and without any further adjustment of the selling prices of said sizes to allow for degradation.

(2) As to sales of screenings and other sizes resulting from the degradation of said coal, no adjustment in price is granted.

(3) All such increases shall be converted to amounts per net ton and adjusted to the nearest multiple of five cents per net ton. For the purposes hereof the next higher multiple of five cents shall be considered the nearest multiple of five cents if the increase per net ton is an exact multiple of two and one-half cents per net ton.

(b) George E. Warren Corporation may, as to sales by it of Welsh anthracite coal which it imports for its own account, physically rehandles and sells to dealers, increase its maximum prices for such coal sold in Region I established pursuant to § 1340.261 (b) of Maximum Price Regulation 122, which maximum prices have been stated by it to be as follows (all prices are for net tons and are subject to a discount of 15¢ per ton for payment within 15 days):

Prices f. o. b. railroad cars at Boston, Mass., or Providence, R. I., not screened:

Cobbles	$10.80
French nuts	10.50
Stove nuts	10.00

Prices f. o. b. trucks, fully screened:

	Boston, Mass.	*Prov., R. I.*
Cobbles	$14.15	$13.95
French nuts	13.40	13.20
Stove nuts	13.15	12.95

by the exact amount of the increase in its f. a. s. costs, including war risk insurance, over the costs of the same sizes upon which these selling prices were based, which costs were the same, less Warren's commission on sales f. a. s. to others, as the figures set forth in paragraph (a) (1) hereof. There shall be no further adjustment of said prices f. o. b. trucks, fully screened, to allow for degradation and, specifically, there shall be no increase in George E. Warren Corporation's established maximum price for screenings f. o. b. trucks Providence, which maximum price it has stated to be $5.00 per net ton, net.

(c) Any dealer in Region I who purchases said Welsh anthracite coal from a person who is granted permission to increase his maximum prices by this order may, on resale in Region I:

(1) If he is an unequipped dealer, adjust his maximum prices in accordance with § 1340.261 (c) (1) of Maximum Price Regulation 122.

(2) If he is an equipped dealer, instead of adjusting his maximum prices in accordance with § 1340.261 (c) (2) of Maximum Price Regulation 122, increase his maximum prices determined in accordance with § 1340.261 (a) and (b) of Maximum Price Regulation 122, or in accordance with § 1340.261 (c) of Maximum Price Regulation 122 prior to the amendment of said subparagraph (c) by Amendment 8 to Maximum Price Regulation 122, by the amount of the increase charged to him by his supplier pursuant to this order over the amount charged to him by his supplier for the Welsh coal, the selling prices of which (advertised; circular, list or schedule; or average, as the case may be) determined his said maximum prices. *Provided, however,* That those dealers who purchase unscreened Welsh anthracite coal from George E. Warren Corporation f. o. b. cars at Boston, Massachusetts or Providence, R. I. pursuant to paragraph (b) hereof may, as to sales of screened cobbles, French nuts and stove nuts sizes, increase their said maximum prices only by the amount per net ton of Warren's increase to them over the amounts set forth in paragraph (b) hereof, without any adjustment of the prices for other sizes resulting from the screening of the coal, and without any further adjustment to allow for degradation.

(3) If he has no base-period maximum prices under § 1340.261 (a) or (b), or (c) prior to amendment by Amendment 8, then the maximum price of his most closely competitive seller carrying on a business of the same character in the same locality, after adjustment pursuant to this order, shall be his maximum price under § 1340.261 (d) (1).

(d) Any person who increases his maximum prices in accordance with paragraph (a), (b) or (c) hereof shall deliver to each purchaser an invoice stating the kind and size of coal, the number of tons delivered, and the price; and shall indicate separately the amount of such increase in substantially the following language:

Amount of increase in maximum price $____ per ton approved by O. P. A.

(e) (1) Any dealer of the class described in paragraph (a) hereof, in the event of a decrease in the price charged by Warren below the amounts set forth in paragraph (a) (1) hereof, and George E. Warren Corporation, in the event of a decrease in its cost below the costs upon which the selling prices referred to in paragraph (b) were based, shall reduce his or its selling prices below his or its heretofore established maximum prices by the amount of said decrease: *Provided, however,* That no such reduction need be made unless the decrease amounts to five cents per net ton or more: *And provided further,* That the amount of any such decrease shall be adjusted to the nearest multiple of five cents. For the purposes hereof, the next higher multiple of five cents shall be considered the nearest multiple of five cents if the decrease per net ton is an exact multiple of two and one-half cents.

(2) Any dealer subject to paragraph (c) hereof shall decrease his maximum prices by the amount of any decrease in the price charged to him by his supplier pursuant to this order.

(f) No increase granted by this order on any particular size of Welsh anthracite coal shall be charged by any seller, and no reduction required by this order need be made, until the seller has sold an amount of the particular size of such coal equivalent to the amount purchased by him for resale at the price in effect prior to a price change provided for under this order.

(g) Each dealer who purchases in cargo lots f. a. s. and who increases his maximum prices pursuant to paragraph (a) hereof shall file with this office, immediately upon making any such increase effective, a statement setting forth his maximum prices for each class of purchaser prior to the increase and the amount of the increase. If the amount of the increase changes either up or down thereafter, as a result of subsequent purchases from George E. Warren Corporation at different prices, a similar statement shall be filed showing such change. George E. Warren Corporation shall file similar statements as to increases pursuant to paragraph (b) hereof.

(h) Any person selling Welsh anthracite coal hereunder to a purchaser for resale shall, at the time of the first sale hereunder to each such purchaser for resale, deliver to him a copy of this order.

(i) This order may be revoked or amended by the Regional Administrator for Region I, or by the Price Administrator, at any time.

(j) Unless the context otherwise requires, the definitions set forth in § 1340.253 of Maximum Price Regulation 122 shall apply to the terms used herein.

(k) This order shall become effective December 1, 1942.

Issued this 1st day of December 1942.

K. B. Backman,
Regional Administrator.

[F. R. Doc. 43-7363; Filed, May 10, 1943; 3:04 p. m.]

[Order G-1 Under MPR 122, Amendment 1]

Welsh Anthracite Coal

Adjustment of Maximum Prices

Amendment 1 to Order G-1 under Maximum Price Regulation 122—Solid Fuels Delivered From Facilities Other Than Producing Facilities—Dealers.

For the reasons set forth in an opinion issued simultaneously herewith, and under the authority vested in the Regional Administrator of Region I of the Office of Price Administration by § 1340.257 (b) (3) of Maximum Price Regulation 122 and § 1340.259 (a) (1) of Revised Maximum Price Regulation 122, *It is hereby ordered,* That Order G-1 under Maximum Price Regulation 122 be amended as set forth below:

1. Subparagraph (2) of paragraph (a) is revoked and subparagraph (3) of paragraph (a) is renumbered (2).

2. The phrase "and, specifically, there shall be no increase in George E. Warren Corporation's established maximum price for screenings f. o. b. trucks Providence, which maximum price it has stated to be $5.00 per net ton, net," at the end of paragraph (b), is deleted and a period is inserted after the word "degradation" preceding said phrase.

3. Paragraph (c) is amended to read as follows:

(c) Any dealer in Region I who purchases said Welsh anthracite coal from a person who is granted permission to increase his maximum prices by this order shall, on resale in Region I, determine his maximum prices in accordance with §§ 1340.254 and 1340.256 (b) of Revised Maximum Price Regulation 122.

4. Paragraph (d) is revoked, and a new paragraph (d) is inserted in place thereof, to read as follows:

(d) The maximum price of any dealer in Region I for screenings resulting from the degradation of Welsh anthracite coal

shall be the highest price charged by the dealer in December 1941 for such screenings, plus fifty cents (50¢) per net ton.

5. Paragraph (i) is amended to read as follows:

(i) (1) Any person seeking an amendment of any provision of this order may file a petition for amendment in accordance with the provisions of Revised Procedural Regulation 1, except that the petition shall be filed in the Regional Office for Region I. No appeal from a denial in whole or in part of such petition by the Regional Administrator of Region I may be made to the Price Administrator.

(2) This order may be revoked, amended or corrected at any time.

6. Paragraph (j) is amended to read as follows:

(j) All dealers in Region I shall determine their maximum prices for Welsh anthracite coal pursuant to the provisions of this order, and not under §§ 1340.254 and 1340.256 of Revised Maximum Price Regulation 122 except to the extent that use of those sections is specifically provided for herein. Unless the context otherwise requires, the definitions set forth in §§ 1340.255 and 1340.266 of Revised Maximum Price Regulation 122 shall apply to the terms used herein. Except as is specifically provided to the contrary, all other provisions of Revised Maximum Price Regulation 122 shall apply to sales and deliveries for which maximum prices are established by this order.

This amendment to Order G-1 shall become effective April 30, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 29th day of April 1943.

K. B. BACKMAN,
Regional Administrator.

[F. R. Doc. 43-7362; Filed, May 10, 1943; 3:04 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File Nos. 59-20, 59-8, 54-75]

COMMONWEALTH & SOUTHERN CORP. (DELAWARE)

NOTICE OF FILING AND NOTICE OF AND ORDER FOR HEARING AND ORDER OF CONSOLIDATION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 8th day of May 1943.

In the matter of The Commonwealth & Southern Corporation (Delaware), Respondent, File No. 59-20; The Commonwealth & Southern Corporation (Delaware) and its Subsidiary Companies, Respondents, File No. 59-8; The Commonwealth & Southern Corporation (Delaware), File No. 54-75.

The Commission having, by order dated April 9, 1942, directed, among other things, that The Commonwealth & Southern Corporation change its present equity capitalization to one class of stock, namely, common stock, in an appropriate manner not in contravention of the applicable provisions of said Act or the rules, regulations and orders promulgated thereunder;

Notice is hereby given that The Commonwealth & Southern Corporation ("Commonwealth"), a registered holding company, has filed with this Commission applications and declarations designated as a plan pursuant to section 11 (e) of the Act proposing action designed to change the stock capitalization of Commonwealth to a single class of common stock and to accomplish various incidental and related matters, all as more particularly described hereinafter;

All interested persons are referred to said plan which is on file in the offices of the Commission for a full statement of the transactions therein proposed which are summarized as follows:

(1) Commonwealth proposes that its capitalization be changed so that it will be authorized to issue 10,000,000 shares of new Common Stock with a par value of $10 per share. Each share of the new Common Stock will be entitled to one vote on all matters submitted to stockholders.

(2) Commonwealth will reacquire and cancel 32,627 shares of its presently outstanding Preferred Stock, either in connection with the disposition of transportation assets as set forth below or in some other appropriate manner subject to the approval of the Commission, so that the total number of shares of Preferred Stock outstanding will be 1,449,373 shares.

(3) Commonwealth will distribute to the holders of 1,449,373 shares of outstanding Preferred Stock, in exchange therefor, $4,348,119 in cash, 1,449,373 shares of the common stock, without par value, of Consumers Power Company and 6,522,178 shares of Commonwealth's new Common Stock. Such distribution will result in the holder of each such share of outstanding Preferred Stock receiving the following:

$3 in cash.
1 share of common stock, without par value, of Consumers Power Company.
4½ shares of Commonwealth's new Common Stock.

(4) Commonwealth will distribute to the holders of the 33,673,328-71/1200 shares of its presently outstanding Common Stock, in exchange therefor, 362,343 shares of the common stock, without par value, of Consumers Power Company and 1,683,666 shares of Commonwealth's new Common Stock. Such distribution will result in the holder of each such share of outstanding Common Stock receiving the following:

1/93rd share of common stock, without par value, of Consumers Power Company.
1/20th share of Commonwealth's new Common Stock.

(5) As a result of the foregoing distributions, the holders of Commonwealth's outstanding Preferred Stock will receive, in addition to $4,348,119 in cash, 80% of the outstanding common stock of Consumers Power Company and 79.5% of Commonwealth's new Common Stock, and the holders of Commonwealth's outstanding Common Stock will receive 20% of the outstanding common stock of Consumers Power Company and 20.5% of Commonwealth's new Common Stock.

(6) Commonwealth's presently outstanding option warrants will not participate under the plan and will be eliminated.

(7) Upon the consummation of the plan, the capitalization of Commonwealth will consist of 8,205,844 shares of new Common Stock with a par value of $10 each, distributed as follows:

6,522,178—to the holders of Commonwealth's Preferred Stock.
1,683,666—to the holders of Commonwealth's Common Stock.

8,205,844—Total shares of new Common Stock to be distributed.

(8) Prior to or upon the consummation of the plan, the following steps will be taken:

(a) Commonwealth will pay its installment bank loans in the amount of $10,450,000, which were incurred in connection with the refunding of debentures, thus eliminating the current annual interest charge against income of $246,648. It will also charge its surplus account with $2,195,743, the unamortized balance of premium paid upon the refunding of such debentures, thus eliminating the current annual amortization charge against income of $1,195,006.

(b) Consumers Power Company will charge its surplus account with approximately $5,660,000 of unamortized debt discount, premium and expense on its previously refunded issues, thus reducing the current annual amortization charge against income by $470,813.

(c) Southern Indiana Gas and Electric Company will charge its surplus account with approximately $487,000 of unamortized railway abandonment loss, thus eliminating the current annual amortization charge against income of $161,580.

(d) The investments of Commonwealth will be restated and segregated on its books at amounts to be determined by its Board of Directors and approved by the Commission.

(9) It is proposed that, as a part of the plan and pending its consummation:

(a) The Commonwealth & Southern Corporation will undertake to carry out a general program for the disposition by Transportation Securities Corporation of all its transportation assets and the proceeds thereof will be applied by Transportation Securities Corporation in reduction of its outstanding notes payable to Commonwealth and Ohio Edison Company, in accordance with further order of the Commission;

(b) If such assets are exchanged in whole or in part for shares of Commonwealth's Preferred Stock, such shares will be reacquired by Commonwealth and cancelled; and

(c) If such assets are sold for cash, the cash received by Commonwealth in reduction of the Transportation Securities Corporation notes held by it will be applied by Commonwealth to the extent

required to the retirement of shares of its outstanding Preferred Stock by asking for tenders or in some other appropriate manner approved by the Commission.

(10) No fractional shares of the common stock of Consumers Power Company or of the new Common Stock of Commonwealth will be issued, but in lieu thereof will be issued non-dividend bearing and non-voting scrip in bearer form. Such scrip, when combined to create one or more full shares, may be surrendered on or before but not after December 31, 1944, in exchange for full shares of common stock of Consumers Power Company or of the new Common Stock of Commonwealth, as the case may be, and the scrip will provide that, as soon as practicable after December 31, 1944, any shares represented by then outstanding scrip shall be sold and the proceeds thereof held for account of the holders of the scrip without liability for interest.

(11) As soon as practicable after the entry by the Commission of an order approving the plan, Commonwealth will submit the plan for approval at a meeting of stockholders and, upon the approval of the plan by a vote of a majority of the outstanding shares of the Preferred Stock and of the Common Stock, each voting as a class, Commonwealth may request the Commission, pursuant to section 11 (e) of the Act, to apply to a Federal court to enforce and carry out the terms and provisions of the plan. The plan will become effective upon declaration by the Board of Directors of Commonwealth.

(12) The plan, upon becoming effective, will be binding upon all holders of Commonwealth's presently outstanding Preferred Stock and Common Stock and all rights of the holders of option warrants against and with respect to Commonwealth shall cease and become void. Upon the plan becoming effective, the Board of Directors shall have full power and authority to take such steps as may be necessary or advisable to carry out the plan.

(13) Distributions will be made pursuant to the plan as soon as practicable after the plan becomes effective. Such distributions will be made against surrender of certificates of Commonwealth's outstanding Preferred Stock and Common Stock in transferable form at the Transfer Agency of Commonwealth at 120 Wall Street, New York, N. Y., or at the office of any other exchange agent appointed pursuant to the plan.

The Commission being required by the provisions of section 11 (e) of said Act before approving any plan thereunder to find after notice and opportunity for hearing that such plan as submitted or as modified is necessary to effectuate the provisions of subsection (b) of section 11, and is fair and equitable to the persons affected by such plan; it, therefore, appearing appropriate to the Commission, in the public interest and in the interest of investors and consumers, that notice be given and a hearing be held upon said plan to afford all interested persons an opportunity to be heard with respect thereto;

And it further appearing to the Commission that the issues presented by said plan involve questions of law and fact common to the issues involved in the pending sections 11 (b) (1) and 11 (b) (2) proceedings (File Nos. 59-8 and 59-20) and should be consolidated and heard together;

And it appearing appropriate, in view of the Commission's order of April 9, 1942 and of the provisions of section 11 (d) with respect to court enforcement of such an order, to provide opportunity for hearing, as part of such consolidated proceeding, as to whether the Commission should approve any plan of reorganization of Commonwealth that may be hereafter proposed by the Commission in the first instance or by any person having a bona fide interest in the reorganization;

It is ordered, That the proceedings with respect to said plan filed pursuant to section 11 (e) of the Act and the pending consolidated proceedings under sections 11 (b) (1) and 11 (b) (2) of the Act be, and they hereby are, consolidated, and that the scope of said consolidated proceedings shall include the issues hereinafter set forth.

It is further ordered, That a hearing in the consolidated proceedings be held at 10:00 a. m., e. w. t., on the 7th day of June 1943, at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania, in such room as may be designated at that time by the hearing room clerk in Room 318. All persons desiring to be heard or otherwise wishing to participate in the proceedings should notify the Commission in the manner provided by its rules and practice, Rule XVII, on or before June 4, 1943.

It is further ordered, That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's rules of practice.

It is further ordered, That without limiting the scope of issues presented by said plan or any other plan which may be filed by any duly qualified persons (as set forth in our order of April 9, 1942, Holding Company Act Release No. 3432) particular attention will be directed at said hearing to the following matters and questions:

(1) Whether the plan as proposed or as modified is necessary to effectuate the provisions of section 11 (b) of the Act and is fair and equitable to the persons affected thereby;

(2) Whether the proposed action is in conformity with the requirements of the Commission's order of April 9, 1942 directing Commonwealth to reduce its equity capitalization to a single class of common stock; and what provisions should be made, and procedure adopted, with respect to the eligibility and nomination of directors, the use of proxy machinery, and other matters, to insure that the redistribution of voting power shall be effective;

(3) Whether the proposed allocations of Commonwealth's new common stock and Consumers Power Company common stock to the preferred and common stockholders of Commonwealth are appropriate or whether such allocations should be modified so as to provide a greater or smaller allocation to the preferred stock;

(4) Whether it is appropriate that the common stock of Consumers Power Company be distributed as part of the proposed plan and whether, prior thereto, action is necessary, and if so, what particular steps should be taken, for any of the following purposes:

(a) To insure a fair and equitable distribution of voting power among the security holders of Consumers Power Company; and what provisions should be made, and procedure adopted, with respect to the eligibility and nomination of directors of Consumers Power Company, the use of proxy machinery, and other matters, to insure that such distribution of voting power shall be effective;

(b) To modify, limit or terminate the existing servicing arrangements between Consumers Power Company and The Commonwealth & Southern Corporation (New York), the system mutual service company, and take such other action as may be necessary or appropriate to effectuate a divorcement of Consumers from the direct or indirect control of Commonwealth;

(5) Whether the proposed distribution of Consumers Power Company common stock is in all other respects in the public interest and in the interest of investors and consumers and consistent with all applicable requirements of the act and the rules thereunder;

(6) Whether the accounting entries proposed to be recorded in connection with the plan are appropriate and in accordance with sound accounting principles and practice;

(7) Whether, in the event that the Commission shall approve such plan as filed or as modified, the Commission shall approve such plan for purposes of section 11 (d) of the Act (as well as section 11 (e)) so as to permit the Commission of its own motion and irrespective of request therefor on the part of Commonwealth, to apply to a court for the enforcement of such plan pursuant to section 11 (d);

(8) Whether, in the event that the Commission shall not approve such plan as filed or as modified, the Commission shall itself propose and approve a plan for purposes of section 11 (d) or shall approve for purposes of section 11 (d) any plan that may be proposed by any person having a bona fide interest in the reorganization of Commonwealth;

(9) Whether the fees and expenses to be paid in connection with the consummation of the proposed plan and all transactions incident thereto are for necessary services and are reasonable in amount;

(10) Generally, whether the proposed transactions are in all respects in the public interest and in the interest of in-

vestors and consumers and consistent with all applicable requirements of the Act and the Rules thereunder, and, if not, what modifications should be required to be made therein and what terms and conditions should be imposed to satisfy the statutory standards.

It is further ordered, That notice of this hearing be given to The Commonwealth & Southern Corporation, and to all other persons; said notice to be given to The Commonwealth & Southern Corporation by registered mail and to all other persons by general release of this Commission which shall be distributed to the press and mailed to the mailing list for releases issued under the Holding Company Act of 1935, and by publication in the FEDERAL REGISTER; and

It is further ordered, That The Commonwealth & Southern Corporation shall give notice of this hearing to all its stockholders, both common and preferred (in so far as the identity of such security holders is known or available to Commonwealth), by mailing to each of said persons a copy of this notice and order for hearing at his last-known address at least 20 days prior to the date of this hearing;

It is further ordered, That jurisdiction be and is hereby reserved to separate, whether for hearing, in whole or in part, or for disposition, in whole or in part, any of the issues, questions or matters hereinbefore set forth or which may arise in this proceeding, or to consolidate with these proceedings other filings or matters pertaining to said plan or to take such other action as may appear conducive to an orderly, prompt and economical disposition of the matters involved.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 43-7396; Filed, May 11, 1943; 9:53 a. m.]

WAR PRODUCTION BOARD.

[Serial 26852-E]

NEW MEXICO STATE HIGHWAY PROJECT

CANCELLATION OF REVOCATION ORDER

Builder: New Mexico State Highway Commission, Santa Fe, New Mexico.

Project: Construction of 8.679 miles of grading, drainage structures and ballast, identified as: New Mexico SN-FAP 90-C (1).

The revocation of preference rating issued on January 8, 1943, Serial No. 26852-E, is hereby cancelled; the preference ratings previously assigned are hereby restored; and said preference ratings shall have full force and effect.

Issued May 10, 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 43-7372; Filed, May 10, 1943; 3:36 p. m.]

NOTICE TO BUILDERS AND SUPPLIERS OF ISSUANCE OF REVOCATION ORDERS PARTIALLY REVOKING AND STOPPING CONSTRUCTION OF CERTAIN PROJECTS

The War Production Board has issued certain revocation orders listed in Schedule A below, partially revoking preference rating orders issued in connection with, and partially stopping construction of the projects affected. For the effect of each such order upon preference ratings, construction of the project, and delivery of materials therefor, the builder and suppliers affected shall refer to the specific order issued to the builder.

Issued May 10, 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

SCHEDULE A

Preference rating order	Serial no.	Name and address of builder	Project location	Issuance date of Revoc.
P-19-e	686 E	Idaho Bureau of Highways, Boise, Idaho.	From Boise westerly to Joplin Cemetery. SN-A-FAP 241-A (1).	4-8-43

[F. R. Doc. 43-7370; Filed, May 10, 1943; 3:36 p. m.]

NOTICE TO BUILDERS AND SUPPLIERS OF ISSUANCE OF REVOCATION ORDERS REVOKING AND STOPPING CONSTRUCTION OF CERTAIN PROJECTS

The War Production Board has issued certain revocation orders listed in Schedule A below, revoking preference rating orders issued in connection with, and stopping the construction of the projects affected. For the effect of each such order upon preference ratings, construction of the project and delivery of materials therefor, the builder and suppliers affected shall refer to the specific order issued to the builder.

Issued May 10, 1943.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

SCHEDULE A

Preference rating order	Serial No.	Name and address of builder	Location of project	Issuance date
P-19-e	12798	Texas State Highway Dept., Austin, Tex.	Dallas County, on St. 183 from 2.3 mi. S.W. of intersection with US 77 to Tarrant County Line.	4-5-43
P-19-e	33936	Indiana St. Highway Comm., Indianapolis, Ind.	South Bend, Ind	5-4-43
P-19-e	38774	Michigan State Highway Dept., Lansing, Mich.	Ypsilanti, Mich	5-4-43
P-19-a	3356-A	Federal Works Agency, North Interior Bldg., Washington, D. C.	Fort Walton, Fla. DPW 8-195	5-3-43
P-19-h	28533	Atlas Oil&Refining Corp., Shreveport, La.	Shreveport, La	5-10-43
P-19-e	52442	Ohio Dept. of Highways, Columbus, Ohio.	Marion, Ohio	5-8-43
P-19-h	47795	Arkansas Fuel Oil Co., Shreveport, La.	Bossier County, Shreveport, La.	5-8-43
		Iron Mines Company of Philadelphia and Venezuela (Bethlehem Steel Corp.) San Felix, Venezuela.	Iron Mines at San Felix	

[F. R. Doc. 43-7371; Filed, May 10, 1943; 3:36 p. m.]